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EDWARD RUDAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-615

BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF
CINCINNATI, ET AL.,

Petitioners,

v.

FRANKLIN B. WALTER, SUPERINTENDENT
OF PUBLIC INSTRUCTION, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

VOLUME I

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FRANKLIN B. WALTER, SUPERINTENDENT
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**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO**

The petitioners, Board of Education of the City School District of the City of Cincinnati; Robert A. Braddock, Edward A. Geers, Virginia K. Griffin, Henry C. Kasson, John S. Rue, Mary T. Schloss, J. Howard Sundermann, Jr., the members of that board; James N. Jacobs, Superintendent of the Cincinnati Public Schools; Carl H. Heimerdinger, Clerk-Treasurer of the Cincinnati Public Schools; Susan MacLaughlin, Betty MacLaughlin, Jerry MacLaughlin, William MacLaughlin, Elisa MacLaughlin, Jennifer A. Patty, Joseph Charles Patty, Mary Katherine Patty, Guy Michael Patty, Joseph C.

Patty, Jr., and Mary Ann Patty, students attending the Cincinnati schools and their parents, on behalf of themselves and as representative parties on behalf of all similarly situated school districts in Ohio, the members of the boards of education for such school districts, all administrators employed by such school districts, the students who reside therein and attend public elementary and secondary schools operated by such school districts and the parents of such students, pray for a writ of certiorari to review the judgment and opinion of the Supreme Court of Ohio entered in this case on June 13, 1979.¹

OPINIONS BELOW

The opinion of the Ohio Supreme Court is reported at 58 Ohio St. 2d 368 (App., pp. 28(a)-55(a)). The opinion of the Court of Appeals for Hamilton County, Ohio is reported at 10 Ohio Ops.3d 26 (App., pp. 57(a)-81(a)). The opinion of the Court of Common Pleas of Hamilton County, Ohio is unreported (App., pp. 89(a)-417(a)).

JURISDICTION

The judgment of the Ohio Supreme Court (App., p. 56(a)) was entered on June 13, 1979. Petitioners' timely petition for rehearing was denied on July 18, 1979 (App., p. 27(a)). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

¹ The respondents are the Superintendent of Public Instruction for The State of Ohio, The State Board of Education, The State Department of Education and The Controlling Board.

QUESTIONS PRESENTED

1. Whether the due process clause of the Fourteenth Amendment to the United States Constitution was violated by the Ohio Supreme Court when, in reversing the judgment of the lower Ohio courts that the Ohio statutory plan for financing public education violates the Ohio Constitution, it ignored the trial court's affirmed findings of fact and devised its own contrary findings of fact, thus violating its long standing rule of accepting findings of fact, unless *no* evidence exists to support them.
2. Whether the equal protection clause of the Fourteenth Amendment to the United States Constitution was violated by the Ohio Supreme Court when, in such case, it ignored the affirmed findings of fact, and devised its own contrary findings of fact thus violating its long standing rule of accepting findings of fact, unless *no* evidence exists to support them.
3. Whether the privileges and immunities clause of the Fourteenth Amendment to the United States Constitution was violated by the Ohio Supreme Court when, in such case, it ignored the affirmed findings of fact and devised its own contrary findings of fact, thus violating its long standing rule of accepting findings of fact, unless *no* evidence exists to support them.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the due process, equal protection and privileges and immunities guarantees of the Fourteenth Amendment to the United States Constitution. They provide that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of laws."

STATEMENT OF THE CASE

In reversing a judgment in favor of the plaintiffs in an action challenging the constitutionality of Ohio's statutory plan for financing public elementary and secondary education, the Supreme Court of Ohio ignored all of the trial court's affirmed findings of fact and, in lieu thereof, constructed its own controlling statements of fact which are in direct and irreconcilable conflict with those findings.

The petitioners herein, The Board of Education of the City School District of the City of Cincinnati, the individual members of that board, the superintendent and clerk-treasurer of the Cincinnati schools and several students who reside in the Cincinnati school district and their parents, filed a declaratory judgment action in the Hamilton County Court of Common Pleas alleging that Ohio's system for financing public elementary and secondary education violates the equal protection clause and the thorough and efficient clause of the Ohio Constitution.²

After a trial consisting of 77 separate trial days during which the petitioners called 70 witnesses and the respondents 22 witnesses, the trial court ruled for the petitioners and adopted the 908 Findings of Fact and 35 Conclusions of Law submitted by them. The trial court, in its Findings of Fact (App., pp. 89(a)-379(a)), found that conditions of fiscal destitution and educational deprivation are pervasive throughout the school districts of Ohio (Findings VII (F)(3), VII (G)(1), VII (I)(1.1) - (1.5); App., pp. 153(a)-197(a)). In all but the few school districts in Ohio which are favored by an abundance of property wealth or income wealth or both, Ohio schools are in generally desperate straits (Finding VIII-

² Article I, § 2 of the Ohio Constitution provides in part that "government is instituted for their [the public's] equal protection and benefit . . ."

Article VI, § 2 of the Ohio Constitution provides in part that "[t]he General Assembly shall make such provisions, by taxation, or otherwise, as . . . will secure a thorough and efficient system of common schools throughout the State."

II (A)(84); App., pp. 283(a)-284(a)). Many districts were forced to close their schools in 1976, 1977 and 1978 for lack of funds (Findings VII (B)(3), (C)(4); App., pp. 133(a)-140(a)). Many of the districts which avoided closing in 1978 were unable to deliver better than austerity levels of education (Findings VII (F)(1), (I)(1.1) and (1.5); App., pp. 154(a), 195(a)-197(a)).

The trial court also found that only a small minority of the schools in Ohio are able to comply with state minimum standards (Finding VII (A)(13); App., p. 131). The quantity and quality of the educational services provided by the districts which serve the overwhelming majority of Ohio's school children are vastly inferior to those which are delivered by the favored few districts (Finding VII (H)(1); App., p. 180(a)).

And for a multiplicity of reasons, the property tax component of the Ohio school finance system has undergone a general statewide collapse (Findings VIII-I (A)(1) - (8); App., pp. 248(a)-254(a)). The state funds that are disbursed to the districts fall pitifully short of compensating for the failure of property taxation to generate sufficient revenue to finance the school districts adequately (Findings VIII-I (A)(2) and VIII-II (A)(5.3); App., pp. 248(a), 269(a)). To make matters worse, the state disburses extra funds to the districts which need them the least and withholds funds from the districts which need them the most (Findings VIII-II (C)(6.3), (F)(7) and (B)(3), (4), (5) and (6); App., pp. 329(a), 336(a)-337(a), 319(a)-320(a)). Many districts, including the Cincinnati City School District, are utterly ruined by the present system (Finding V (1) - (18); App., pp. 115(a)-123(a)).

The Court of Common Pleas thus held the Ohio system for financing public elementary and secondary education to be violative of both the equal protection and thorough and efficient clauses of the Ohio Constitution.

The Court of Appeals for Hamilton County, Ohio affirmed the trial court's ruling that the Ohio system of school financing

violates the equal protection clause of the Ohio Constitution, and reversed its ruling that the system violates the thorough and efficient clause of the Ohio Constitution. The Court of Appeals, however, affirmed and adopted all of the trial court's findings of fact (App., p. 75(a)).

Upon appeal, the Ohio Supreme Court ruled that Ohio's school financing system does not violate either the equal protection clause or the thorough and efficient clause of the Ohio Constitution. In its ruling, however, that Court formulated controlling statements of fact which are in direct and irreconcilable conflict with the Common Pleas Court's affirmed findings of fact.

REASONS FOR GRANTING THE WRIT

This case squarely presents an important question of federal constitutional law, the ultimate resolution of which will safeguard the procedural rights of countless litigants. May the court of last resort of a state disregard the affirmed and unchallenged findings of fact made by a trial court in reversing a judgment predicated upon these findings?

I. THE OHIO SUPREME COURT VIOLATED ITS OWN CUSTOMARY PROCEDURAL RULE AND IN SO DOING DEPRIVED THE PETITIONERS OF RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

In this case the Ohio Supreme Court violated its own long established procedural rule that no court of review is permitted to substitute its judgment on issues of fact for that of the trier of facts. *Gates v. Board of Education*, 11 Ohio St. 2d 83, 86 (1967). Indeed, that Court has specifically stated on numerous occasions that "where similar factual findings are made by the Court of Common Pleas and the Court of Appeals on appeal they must be accepted by this Court unless there is no evidence of probative value to support them".

Gillen-Crow Pharmacies, Inc. v. Mandzak, 5 Ohio St. 2d 201, 205 (1966).³

In deciding this case, however, the Ohio Supreme Court did not accept the facts and the weight of the evidence as found by the two lower courts, but rather ignored the affirmed findings of fact. The decision of the Ohio Supreme Court is based upon numerous factual assertions which are in direct conflict with the trial court's affirmed findings of fact. Those findings, which were based upon the trial judge's evaluation of the credibility of the numerous witnesses and upon his weighing of the evidence, are fully supported by the record. The respondents have never disputed this.

The Ohio Supreme Court's violation of its long-standing rule of practice has deprived the petitioners of federal constitutional rights guaranteed by the due process of law clause, the equal protection of law clause and the privileges and immunities clause of the Fourteenth Amendment. This deprivation of the federal constitutional rights of the petitioners by the Ohio Supreme Court's arbitrary decision to cast aside its own stated rule of practice impels this Court to grant the petitioners' writ of certiorari.⁴

³ See also, *G.S.T. v. Avon Lake*, 48 Ohio St. 2d 63 (1976); *In re Estate of Duiguid*, 24 Ohio St. 2d 137 (1970); *State ex rel. Pomeroy v. Webber*, 2 Ohio St. 2d 84 (1965); *Jaffrin v. DiEgidio*, 152 Ohio St. 359 (1949); *Union Properties, Inc. v. Cleveland Trust Co.*, 152 Ohio St. 430 (1949); *McKellips v. Industrial Comm. of Ohio*, 145 Ohio St. 79 (1945); *In re Estate of Lawry*, 140 Ohio St. 223 (1942); *State ex rel. Kobelt v. Baker*, 137 Ohio St. 337 (1940); *Peer v. Industrial Comm. of Ohio*, 134 Ohio St. 61 (1938); *State ex rel. Puehler v. Board of Educ.*, 134 Ohio St. 280 (1938); *Maus v. Auglaize Bank*, 125 Ohio St. 32 (1932); *F.W. Woolworth Co. v. Kinney*, 121 Ohio St. 462 (1929); *Hamilton v. Dilley*, 120 Ohio St. 127 (1929); *Katz v. American Finance Co.*, 112 Ohio St. 24 (1925); *McNab v. Board of Park Comm.*, 108 Ohio St. 497 (1923); *Sutter v. State ex rel. Maul*, 108 Ohio St. 309 (1923); *Ohio Collieries Co. v. Cocke*, 107 Ohio St. 238 (1923); *Taylor v. Flower Deaconess Home and Hospital*, 104 Ohio St. 61 (1922); *Foster v. Scottish Union & Natl. Ins. Co.*, 101 Ohio St. 180 (1920).

⁴ The provisions of the Federal Constitution are the supreme law of the land and no right granted or secured by the United States Constitu-

Petitioners have not been afforded appellate review of the decision of the Ohio Supreme Court. Their timely motion for rehearing was summarily denied by the Ohio Supreme Court. There is no appellate court, other than this Court, to which petitioners can turn for redress of the violations of their federal constitutional rights by the Ohio Supreme Court.

A. The Ohio Supreme Court's Conclusion That Ohio's School Financing System Is Not Violative Of The Equal Protection Clause Of The Ohio Constitution Is Predicated Upon Misstatements Of Fact Which Are At Absolute Variance With The Common Pleas Court's Findings Of Fact.

The Ohio Supreme Court's conclusion that Ohio's school financing system comports with the Ohio Constitution's Equal Protection guarantee rests upon that Court's erroneous conclusory assessment that the General Assembly's educational financing plan operates uniformly among school districts, enables all schools to comply with state minimum standards which assure an education "of high quality", and does not deny an adequate educational opportunity to any child in the state, and that the wealth-based disparities in educational opportunity which exist under the system are justified because the system preserves the principle of local citizen control of educational decision-making. The affirmed findings of fact which the trial court made based upon the evidence refute each of those considerations in its entirety. These affirmed findings are that the system operates capriciously and unfairly among school districts, has placed almost all of Ohio's schools

tion can be impaired in any manner by a law or pronouncement of any manner by a law or pronouncement of a state governmental agency. *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540 (1902). Any state practice, no matter how clearly within a state's acknowledged power, which interferes with or is contrary to the United States Constitution, must yield. *Free v. Bland*, 369 U.S. 663, 666 (1962); Article VI, Clause 2, United States Constitution.

in such financial distress that they are unable to comply with the State's minimum standards (which represent the lowest tolerable level of education), and denies adequate educational opportunity to a majority of Ohio's school age children; and that "local control" of education does not exist to any meaningful degree except in a few financially-favored districts.

The irreconcilable conflict described above between the Ohio Supreme Court's factual conclusions and the trial court's findings of fact is illustrated by the ensuing comparison of certain pivotal statements from the Ohio Supreme Court's majority opinion and the findings of fact applicable to the issues which are the subject of those statements.

- (1.) Contrary To The Ohio Supreme Court's Conclusory Statement Of Fact, The Common Pleas Court Found That The Number Of Dollars Guaranteed By The Present System Is So Inadequate As To Render Almost All Of Ohio's Schools Unable To Comply With The State's Minimum Standards For Ohio Schools.

THE OHIO SUPREME COURT:

The number of dollars guaranteed per pupil at the 20 mill level has been determined by the Education Review Committee [Committee of the Ohio General Assembly] to be sufficient to assure that all school districts are given the means to comply with the State Board of Education Minimum Standards, which describe a program of "high quality" pursuant to R.C. [Ohio Revised Code] 3301.07(D). (58 Ohio St. 2d at 382, App. p. 42(a)).

THE FINDINGS OF FACT:

[A]lmost 97% of the 1,869 schools which were inspected were found not to be in compliance with one or more separate standards. (Finding VII (A)(7), App. p. 130(a)).

Specifically, the reports indicated the following lack of compliance with various state standards: 53% of the buildings were found to be deficient in curriculum and instruction; 63% in staff and personnel; 14% in pupil-teacher ratios; 29% in libraries; 54% in textbooks; 34% in classroom facilities; 45% in library facilities; 47% in art, music and industrial education facilities; 31% in physical education facilities. (Finding VII (A)(8), App. p. 130(a)).

The significance of the evidence of non-compliance by schools with state minimum standards is that the General Assembly has established a system of common schools throughout the state in which the overwhelming majority of the schools are substandard as measured by the state's own criteria. (Finding VII (A)(15), App. p. 132(a)).

- (2.) Contrary To The Ohio Supreme Court's Conclusory Statement Of Fact, The Common Pleas Court Found That Disparities In Educational Opportunity Based Upon Property Wealth, As Well As Disparities Based Upon Tax Rates, Continue To Exist Among Ohio's School Districts Under The Equal Yield Formula.

THE OHIO SUPREME COURT:

Its [the "Equal Yield" formula's] objective is to equalize the property wealth base upon which the school districts raise operating revenue through the levy of voter-approved taxes (58 Ohio St. 2d at 371, App. p. 31(a)).

THE FINDINGS OF FACT:

Its objective *purports* to be that of "equalizing" the property wealth bases upon which the school districts raise operating revenue through the levy of voter-approved taxes (Finding IV (2), App. p. 105(a)). (Our emphasis).

The system does not equalize the ability of school districts to increase school millage rates, however. Nor does it purport to equalize the income wealth of the residents of school districts. Indeed, the "reward for effort" element operates to enlarge the disparities in school operating revenues which exist among the districts based upon their different tax rates and differing taxing abilities. Because the formula establishes an arbitrary property wealth ceiling of \$48,000 per pupil, which is lower than the tax duplicates of some of the districts, disparities in educational opportunity based upon property wealth, as well as disparities based upon tax rates, continue to exist among Ohio's school districts. (Finding IV (3), App. p. 105(a)).

- (3.) Contrary To The Ohio Supreme Court's Conclusory Statement Of Fact, The Common Pleas Court Found That The Equal Yield Formula Does Not Assure Each School District An Equal Number Of Dollars For Each Mill Levied Up To Thirty Mills, Regardless Of The Property Wealth Of The District. Indeed, Millage Variations Explain Only 41% Of The Variations In Guaranteed Yield, Leaving 59% Of The Variations To Be Occasioned By Other Factors, Principally Property Values.

THE OHIO SUPREME COURT:

The Equal Yield Formula assures that each school district will receive an equal number of dollars for each mill levied up to 30 mills, regardless of the property wealth of the district. (58 Ohio St. 2d at 382, App. p. 42(a)).

THE FINDINGS OF FACT:

In a district power equalizing (DPE) formula which operates properly and achieves equal yield for equal effort, variations in the guaranteed yield (basic aid plus local revenues) should result from, and correlate directly with, variations in millage. (Finding VIII-II (B)(7), App. p. 321(a)).

But Ohio's DPE formula is not effective for even this purpose. Guaranteed yield is influenced by factors other than millage to such an extent that even at full funding the system is, to a great extent, haphazard. (Finding VIII-II (B)(8), App. p. 321(a)).

[E]ven at full funding, millage variations explain only 41% of the variations in guaranteed yield, leaving 59% of the variations to be occasioned by other factors. (Finding VIII-II (B)(15), App. p. 322(a)).

These other factors include mandates, save-harmless, local yield above the guaranteed level, actual v. equalized mills and most significantly, property values. (Finding VIII-II (B)(16), App. p. 322(a)).

- (4.) Contrary To The Ohio Supreme Court's Conclusory Statement Of Fact, The Common Pleas Court Found That The Only Boards Of Education In Ohio Which Have Any Degree Of Local Control Over Educational Decisions Are Those In A Few Well Financed School Districts; That In The Great Majority Of School Districts Local Control Of Education Is Non-existent.

THE OHIO SUPREME COURT:

In addition to allowing people within a school district to determine how much money they are willing to devote to education, local control allows for local participation in the

decision-making process that determines how these local tax dollars will be spent. Each school district can develop programs to meet perceived needs. (58 Ohio St. 2d at 380, App. p. 41(a)).

THE FINDINGS OF FACT:

The Court finds from the testimony of numerous superintendents and board members that under the present system of financing public education, the only boards of education in Ohio which have any degree of local control over educational decisions are those boards in a few well-financed school districts. In the great majority of school districts, financial constraints and legal mandates have limited school board options and have very severely curtailed the power of boards of education to make important educational decisions. (Finding XI (1), App. p. 375(a)).

B. The Ohio Supreme Court's Conclusion That The School Financing Plan Does Not Violate The Command Of The Ohio Constitution's Thorough And Efficient Clause Because No School District Receives So Little Local And State Revenue That The Students Are Effectively Being Deprived Of Educational Opportunity Is Demonstrably Contrary To The Comprehensive Findings Of The Trial Court Founded Upon The Massive Record In This Case.

It is clear from the opinion of the Ohio Supreme Court that that Court's holding that Ohio's system for financing elementary and secondary education is not violative of the Ohio Constitution's thorough and efficient clause, as construed in *Miller v. Korns*, 107 Ohio St. 287 (1923), rests upon the majority's incorrect conclusion that the system does not place any school district in such financial destitution that the students therein are effectively deprived of educational oppor-

tunity, that the equal yield formula ensures each child an adequate education, and that even the school closings that occur under the Ohio system are educationally innocuous. Each of those conclusions is contrary to specific and comprehensive findings made by the Common Pleas Court. As we demonstrate herein, the trial court found that so many of the school districts in Ohio are underfunded that a majority of Ohio's school children are being denied educational opportunity, and that school closings have an irreparably harmful educational and psychological effect upon school children.⁵

It was massive proof which gave rise to the trial court's hundreds of separate findings of fact concerning the nature and extent of educational deprivation which exists throughout Ohio as a direct result of the present school financing system. We request that this Court grant certiorari in order to require the Ohio Supreme Court to apply its own practice to the findings of the court below. If required to do so, it would be compelled to hold that the Equal Yield Formula's guarantee at 20 mills is not sufficient to ensure that each child receives an adequate education, and it would perforce have to conclude that the Ohio school financing system violates the thorough and efficient clause of the Ohio Constitution.

⁵ The petitioners' proof of widespread educational deprivation was so comprehensive that on three separate occasions respondents' counsel objected to the petitioners calling any further witnesses to testify to it on the ground that such evidence had become cumulative. In order to show the depth and breadth of the educational damage which the present system has brought to school children throughout Ohio, the petitioners interrogated more than forty witnesses who testified to educational deprivation which exists in twenty four specific districts in the state, and showed, moreover, that because of the uniformity of inadequate funding in the majority of Ohio's school districts, submarginal educational conditions are pervasive throughout the state.

(1.) Contrary To The Ohio Supreme Court's Conclusory Statement Of Fact, The Common Pleas Court Found That Conditions Of Educational Deprivation Are Pervasive Throughout A Majority Of Ohio's School Districts And That The Present System Falls Far Short Of Delivering To The School Districts Sufficient Resources To Enable Them To Provide A Satisfactory Level Of Education To The Overwhelming Majority Of Ohio's School Children.

THE OHIO SUPREME COURT:

This court, therefore, intimated in *Miller v. Korns, supra*, that the wide discretion granted to the General Assembly is not without limits. For example, in a situation in which a school district was receiving so little local and state revenue that the students were effectively being deprived of educational opportunity, such a system would clearly not be thorough and efficient. (58 Ohio St. 2d at 387, footnote omitted, App. p. 48(a)).

To the extent that the Equal Yield Formula's guarantee at 20 mills is sufficient to ensure that each child receives an adequate education, the system devised by the General Assembly is constitutional. . . . (58 Ohio St. 2d at 387-88, App. p. 48(a)).

THE FINDINGS OF FACT:

Financial resources are so limited in the closing audit districts that in none of those districts are the children receiving more than barely minimal educational opportunities. The superintendents of those districts described the educational programs they are able to provide as "just able to get by" and below state minimum standards, "barely adequate", not having enough money "to carry on an educational program",

lacking "severely in the quality level", not allowing each child to exploit his individual talents to the fullest, "the bare minimum . . . just enough to be chartered". (Finding VII (E)(1), App. p. 142(a)).

In the case of each of the districts so disadvantaged, the conditions are the direct result of a severe shortage of funds. (Finding VII (E)(2), App. p. 143(a)).

The plaintiffs showed with documentary and statistical evidence and with expert testimony that in all likelihood the conditions of educational deprivation which exist in the audit districts also exist in all of the districts in the state which fall in the same range of dollars per pupil as do the audit districts. The number of districts which are similarly limited financially is 377. They comprise over 60% of the districts in the state. Eight hundred ninety-five thousand students are enrolled in those districts. (Finding VII (F)(1), App. p. 154(a)).

From the above evidence, the Court concludes that conditions of widespread educational deprivation which the testimony of the superintendents showed to exist in the closing audit districts, exist throughout more than half of the school districts in this state. (Finding VII (F)(3), App. p. 159(a)).

The school children who are enrolled in those districts which had total state and local support of less than \$1000 per pupil in 1975-76, received substandard educational services that year (Finding VII (F)(2.6), App. p. 156(a)) and may be presumed to be receiving substandard educational services at the present time since school district costs are escalating at a greater rate than are school district revenues. (Finding VI(C)(7), App. p. 128(a)). Sixty-two percent of Ohio's students were enrolled in districts which had less than \$1100 per pupil in total state and local support in 1975-76 and they may similarly be presumed to be currently receiving educational services of the same level they received in 1975-76. (Finding VI(A)(14), App. p. 125(a)).

[T]he Court concludes that a substantial majority of Ohio's pupils (the 62% enrolled in the districts which had less than \$1100 total support per pupil in 1975-76) are presently receiving less than adequate educational services and opportunities. (Finding VII (I)(1.1), App. p. 195(a)).

[I]t is clear that the school districts in this state generally fall far short of having sufficient resources to provide a satisfactory level of education to the overwhelming majority of Ohio's school children, and the Court so finds. Moreover, the present finance system falls far short of funding a system of public schools which can comply with the State Board of Education's minimum standards. That fact alone supports the finding that, by and large, the school children in Ohio are getting educationally shortchanged. (Finding VII (I)(1.5), App. p. 197(a)). (Our emphasis).

- (2.) Contrary To The Ohio Supreme Court's Conclusory Statement Of Fact, The Common Pleas Court Found That The School Closings That Occur Under The Present System Bring Irreparable Educational Harm To The Affected Students.

THE OHIO SUPREME COURT:

[P]laintiffs attempt to equate school closings with "educational deprivation," (58 Ohio St. 2d at 288, App. p. 49(a)). .

THE FINDINGS OF FACT:

All of the children deprived of schooling as a result of school closings suffered educational losses. The educational development of the children was affected because a loss of a day of instruction can never be recaptured. Finding VII (D)(1), App. p. 141(a)).

II. THE JUDGMENT OF THE OHIO SUPREME COURT VIOLATES FUNDAMENTAL FEDERAL CONSTITUTIONAL RIGHTS OF THE PETITIONERS.

A. The Ohio Supreme Court's Decision Violates The Federal Due Process Rights Of The Petitioners.

It is axiomatic that the Ohio Supreme Court is constitutionally required to provide due process of law in accordance with the mandates of the Fourteenth Amendment. Due process of law is an evolving concept, the importance of which has been described by this Court as follows:

Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner.

Boddie v. Connecticut, 401 U.S. 371, 374 (1971).

Due process of law has been variously defined to mean "fair procedure,"⁶ "fair, right and just" procedures,⁷ and "fundamental fairness in the light of the total circumstances".⁸ Citizens are entitled to due and regular process not only in the pleading, hearing and consideration of their litigated claim, but also in the *disposition* of their litigated claim.⁹

⁶ *Poe v. Charlotte Memorial Hospital, Inc.*, 374 F. Supp. 1302, 1311 (W.D. N.C. 1974) (3 Judge Court).

⁷ "Due process is that which comports with the deepest notions of what is fair and right and just." *Solesbee v. Balkan*, 339 U.S. 9, 16 (1950) (Frankfurter, J. dissenting).

⁸ *Whitfield v. Simpson*, 312 F. Supp. 889, 874 (E.D. Ill. 1970) (3 Judge Court); *Buttny v. Smiley*, 281 F. Supp. 280, 288 (D. Colo. 1968).

⁹ *Martin v. Neuschel*, 396 F. 2d 759, 760 (3rd Cir. 1968).

Generally, due process does not require that a state provide for appellate review of civil cases. However, where the state does provide a means of appeal, the appeal process which is created "must be exercised without discrimination".¹⁰ Such discrimination occurs in violation of the Fourteenth Amendment when a case between litigants is arbitrarily decided by a court "in violation of settled principles of law and contrary to undisputed facts".¹¹

This Court has stated that in the review of a criminal case on appeal:

To conform to due process of law, petitioners were entitled to have the validity of their convictions appraised on consideration of the case at it was tried and *as the issues were determined in the trial court*. [Our emphasis]

Cole v. Arkansas, 333 U.S. 196, 202 (1948).

The petitioners submit that the Ohio Supreme Court's action in arbitrarily choosing not to follow its long-standing practice not to substitute its judgment as to findings of fact for that of the trier of fact constitutes a discriminatory disposition of their claims in violation of the due process clause of the Fourteenth Amendment.

¹⁰ *National Union of Marine Cooks & Stewards v. Arnold*, 348 U.S. 37, 43 (1954). Accord, *Oppenheimer v. Roth*, 468 F.2d 901, 902 (9th Cir. 1972); *In re Brown*, 439 F.2d 47, 51 (3rd Cir. 1971) (en banc); *Compton v. Naylor*, 392 F. Supp. 575, 578 (N.D. Tex. 1975) (3 Judge Court).

¹¹ *Williams v. Tooke*, 108 F.2d 758, 759 (5th Cir.), cert. denied, 311 U.S. 655 (1940), citing, *Postal Telegraph Cable Co. v. Newport, Ky.*, 247 U.S. 464 (1918).

B. The Effect Of The Ohio Supreme Court's Decision Is That Of Denying The Petitioners Access To The Courts.

The right to meaningful access to the courts of a state is a fundamental right protected by the due process¹² and privileges and immunities¹³ clauses of the Fourteenth Amendment. The right to meaningful access to the courts has always meant that all litigants will have like access and equal treatment by the courts. As early as 1885, this Court stated that all persons

. . . should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition . . .

Barbier v. Connolly, 113 U.S. 27, 31 (1885).¹⁴

Petitioners submit that their right to like and meaningful access to the courts and equal treatment by those courts was denied when the Ohio Supreme Court arbitrarily imposed a different rule of practice upon them than upon all other litigants.

¹² *Wolf v. McDonnell*, 418 U.S. 539, 579 (1974); *Procurier v. Martinez*, 416 U.S. 396, 419 (1974); *Moeck v. Zajackowski*, 541 F.2d 177, 180 (7th Cir. 1976); *Silver v. Cormier*, 529 F.2d 161, 163 (10th Cir. 1976); *Hall v. Maryland*, 433 F. Supp. 756 (D. Md. 1976); *Hooks v. Wainwright*, 352 F. Supp. 163, 167 (M.D. Fla. 1972).

¹³ *Angel v. Bullington*, 330 U.S. 183, 188 (1947); *Broderick v. Rosner*, 294 U.S. 629, 642 (1935); *Canadian Northern R. Co. v. Eggen*, 252 U.S. 553, 560 (1920); *Slaughter-House Cases*, 83 U.S. 394, 409 (1872); *Crandall v. Nevada*, 73 U.S. 744, 747 (1867). See also, *Corfield v. Coryell*, 6 Fed Cases 3230 (1823).

¹⁴ See also, *Chambers v. Baltimore & Ohio R. Co.*, 207 U.S. 142, 148 (1907):

C. The Ohio Supreme Court Denied The Plaintiffs The Equal Protection Of The Laws.

The equal protection clause of the Fourteenth Amendment prohibits a State from drawing a legal line which constitutes an invidious discrimination against a particular class of citizens. *Stanley v. Illinois*, 405 U.S. 645 (1972). In determining whether a state-established classification violates the equal protection clause, the court must decide whether duties or burdens different from those resting upon the general public are cast upon the class. *Atchison, Topeka & Santa Fe R. Co. v. Matthews*, 174 U.S. 96, 104-105 (1899).

While the Ohio Supreme Court decided that the school children in Ohio do not have a fundamental right to an education, nonetheless, those children do have a legitimate entitlement to a public education as a property interest which is protected by the Fourteenth Amendment. *Goss v. Lopez*, 419 U.S. 565, 573-74 (1975). In addition, those children have a fundamental constitutional right to like and meaningful access to the courts and to equal treatment by the courts. The equal protection clause, while not affording a litigant a right of appeal, does guarantee that if an appellate process is provided all litigants are to be treated alike. *Lindsey v. Normet*, 405 U.S. 56, 77 (1972); *Javits v. Stevens*, 382 F. Supp. 131, 140 (S.D. N.Y. 1974). Indeed, this Court has ruled that state courts that apply a rule of procedure in a discriminatory manner run afoul of the Fourteenth Amendment. *Douglas v. California*, 372 U.S. 353 (1963).

The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States but is granted and protected by the Federal Constitution.

The Ohio Supreme Court's decision in this case created two classes of litigants. Heretofore, all litigants in Ohio were treated alike in that unless no evidence existed to support a trial court's finding, the reviewing court could not substitute its judgment as to a finding of fact for that of the trier of facts. The Ohio Supreme Court's failure to apply that same rule to the present litigants is an act of invidious discrimination against those litigants which violates their constitutional right to equal protection of the laws.

CONCLUSION

In his famous dissenting opinion in *Northern Securities Company v. United States*, 193 U.S. 197, 400-2 (1903) (Holmes, J. dissenting), Justice Holmes laid down a principle of judicial behavior which should have guided the Ohio Supreme Court to apply its customary procedure of adhering to the trial court's findings of fact, even in this case of overriding political consequence:

Great cases, like hard cases, make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of *some accident of overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful and before which even well settled principles of law will bend.* [Our emphasis]

In deciding such a case, as this one is, a court should proceed in the same manner as if it were deciding a routine case, in Holmes' words, "with the same natural and spontaneous interpretation that one would be sure of if the question arose upon an indictment for a similar act which excited no public attention, and was of importance only to the prisoner before the court".

Thus, in reviewing the judgments of the courts below, the Ohio Supreme Court was obligated to accept the finding of the Common Pleas Court that "the school districts in this state generally fall short of having sufficient resources to provide a satisfactory level of education to the overwhelming majority of Ohio's school children" as it would accept the finding of a trial court in an automobile accident case that a defendant was driving his vehicle 90 miles an hour through a crowded intersection.

In upholding the Ohio system for financing elementary and secondary education, the Ohio Supreme Court not only

cast aside evolving, enlightened principles of state constitutional law and consigned the rights of Ohio's schoolchildren to a constitutional limbo, it violated its own time-honored practice of adhering to the affirmed findings of fact of the Court of Common Pleas. That is the import of dissenting Justice Locher's statement that, "the majority opinions flies square in the face of reality, not to mention the findings of fact and conclusions of law of the trial court and the Court of Appeals". (58 Ohio St. 2d at 391, App. p. 52(a)).

In deciding this case in that manner, the Ohio Supreme Court violated the federal constitutional rights of the plaintiffs. Only this Court can rectify the violation of these federal rights. The Fourteenth Amendment rights of an infinite number of state court litigants are at stake. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 15, 1979

APPENDIX

IN THE SUPREME COURT OF OHIO
APPEAL FROM THE COURT OF APPEALS
OF HAMILTON COUNTY, OHIO
FIRST APPELLATE DISTRICT

Case No. 78-1284

BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF
CINCINNATI, et al.

Appellees and Cross-Appellants,
v.

FRANKLIN B. WALTER, SUPERINTENDENT
OF PUBLIC INSTRUCTION
STATE OF OHIO, et al.

Appellants and Cross-Appellees.

MOTION FOR REHEARING

(Filed June 25, 1979)

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CROSS-APPELLEES

Appellees and Cross-Appellants hereby move for a rehearing pursuant to Supreme Court Rule IX, Section 1, on the ground that, in deciding this case, the Court formulated controlling statements of fact which are in direct and irreconcilable conflict with the Common Pleas Court's affirmed findings of fact.

As demonstrated in the brief in support of this motion, the Court departed from its time-honored practice and, in so doing, violated the rights of the plaintiffs conferred by the United States Constitution.

The Appellees and Cross-Appellants ask the Court to schedule this motion for argument so as to afford the plaintiffs a fair opportunity to bring the Court's error to the attention of all of the justices.

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ATTORNEYS FOR APPELLEES
AND CROSS-APPELLANTS

IN THE SUPREME COURT OF OHIO
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**BRIEF IN SUPPORT OF
MOTION FOR REHEARING**

[TABLE OF CONTENTS AND AUTHORITIES OMITTED]

I. Introduction

This motion for rehearing is designed to direct the Court's attention to an error which the Court made in reviewing this case and to afford it an opportunity to correct that error. The Court's decision upholding the constitutionality of Ohio's school financing system rests upon certain contrived assertions of fact which directly contradict the Common Pleas Court's affirmed findings of fact supported by the massive record.

In deciding this case in that manner, this Court violated its own traditional rules of procedure as well as the federal constitutional rights of the plaintiffs to have equal treatment by the courts in the disposition of their litigated claims.

This motion is appropriate under the test which the Court has established for determining the appropriateness of motions for rehearing. "The very purpose of providing for any application for rehearing is to correct mistakes by this court which counsel could not have reasonably anticipated before the court's decision." *Grandle v. Rhodes*, 166 Ohio St. 197, 200 (1957) (Taft, J., concurring.) Under no set of circumstances could counsel have anticipated that the Court would decide this case on the basis of factual formulations which are contrary to the trial court's abundant findings of fact. Thus, the propriety of this motion is beyond dispute.

II. This Court Failed To Accept The Unchallenged, Affirmed Findings Of Fact Made By The Court Of Common Pleas Based Upon The Massive Proof Adduced By The Plaintiffs.

In upholding the Ohio system for financing elementary and secondary education, this Court's majority violated its own time-honored practice of adhering to the findings of fact of the Court of Common Pleas. A careful examination of the majority's opinion discloses a sequence of statements of fact which are ineluctably contrary to the affirmed, and indeed unchallenged, findings of fact of the Court of Common Pleas. In so doing, the Court violated the practice of this Court that findings of the trier of fact are overturned only when no support exists in the record. *Gates v. Board of Education*, 11 Ohio St. 2d 83 (1967).

Moreover, in departing from its usual and customary procedure for appellate review, this Court violated the plaintiffs' rights guaranteed by both the Due Process and the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Thus, in its anxiety to decide this case for the defendants under the Ohio Constitution, the Court violated the rights of the plaintiffs under the United

States Constitution. The Court can and should redress that violation on rehearing.

The plaintiffs' motion for rehearing should be set down for argument so that the plaintiffs are accorded a fair opportunity to bring to the Court's attention the gravity of its error.

(A.) The Court's Conclusion That The School Financing System Is Not Violative Of The Ohio Equal Protection Clause Of the Ohio Constitution Is Predicated Upon Misstatements Of Fact Which Are At Absolute Variance With The Common Pleas Court's Findings Of Fact.

This Court's conclusion that the system comports with the Ohio Constitution's Equal Protection guarantee rests upon the Court's erroneous conclusory assessment that the General Assembly's educational financing plan operates uniformly among school districts, enables all schools to comply with state minimum standards which assure an education "of high quality", and does not deny an adequate educational opportunity to any child in the state, and that the wealth-based disparities in educational opportunity which exist under the system are justified because the system preserves the principle of local citizen control of educational decision-making. The affirmed findings which the trial court made based upon the evidence refute each of those considerations in its entirety. These findings are that the system operates capriciously and unfairly among school districts, has placed almost all of Ohio's schools in such financial distress that they are unable to comply with the State's minimum standards which themselves represent not an education of high quality but the lowest tolerable level of education, and denies adequate educational opportunity to a majority of Ohio's school age children; and that "local control" of education does not exist to any meaningful degree except in a few financially-favored districts.

The irreconcilable conflict described above between this Court's statements and the trial court's findings of fact is

illustrated by the ensuing comparison of certain pivotal statements from the majority's opinion and the findings of fact applicable to the factual issues which are the subject of those statements.

- (1.) Contrary To This Court's Conclusory Statement Of Fact, The Common Pleas Court Found That The Only Boards of Education In Ohio Which Have Any Degree Of Local Control Over Educational Decisions Are Those In A Few Well Financed School Districts; That In The Great Majority of School Districts Local Control Of Education Is Non-existent.

THIS COURT:

In addition to allowing people within a school district to determine how much money they are willing to devote to education, local control allows for local participation in the decision-making process that determines how these local tax dollars will be spent. Each school district can develop programs to meet perceived needs. 58 Ohio St. 2d at 380.

THE FINDINGS OF FACT:

The Court finds from the testimony of numerous superintendents and board members that under the present system of financing public education, the only boards of education in Ohio which have any degree of local control over educational decisions are those boards in a few well-financed school districts. In the great majority of school districts, financial constraints and legal mandates have limited school board options and have very severely curtailed the power of boards of education to make important educational decisions. (Finding XI (1)).

- (2.) Contrary To This Court's Conclusory Statement Of Fact, The Common Pleas Court Found That The Number Of Dollars Guaranteed By The Present System Is So Inadequate As To Place Almost All Of Ohio's Schools In The Condition Of Inability To Comply With The State's Minimum Standards For Ohio Schools.

THIS COURT:

The number of dollars guaranteed per pupil at the 20 mill level has been determined by the Educational Review Committee to be sufficient to assure that all school districts are given the means to comply with the State Board of Education Minimum Standards, which describe a program of "high quality" pursuant to R.C. 3301.07(D). 58 Ohio St. 2d at 382.

• • •

The "Equal Yield Formula" attempts to establish a funding floor, at 20 mills, that is sufficient to assure that each school district has the means to comply with state minimum standards. 58 Ohio St. 2d at 388.

THE FINDINGS OF FACT:

[A]lmost 97% of the 1,869 schools which were inspected were found not to be in compliance with one or more separate standards. (Tr. 3119). (Finding VII (A)(7)).

Specifically, the reports indicated the following lack of compliance with various state standards: 53% of the buildings were found to be deficient in curriculum and instruction; 63% in staff and personnel; 14% in pupil-teacher ratios; 29% in libraries; 54% in textbooks; 34% in classroom facilities; 45% in library facilities; 47% in art, music and industrial education facilities; 31% in physical education facilities. (Plaintiffs' Exh. 165). (Finding VII (A)(8)).

Every single elementary school which was inspected was found to be in violation of at least three minimum standards.

Only 18% of the elementary schools were found not to be in violation of a physical facility requirement. Only 24 of the 986 secondary schools were found not to be in violation of the standards. These facts were acknowledged by State Assistant Superintendent of Public Instruction G. Robert Bowers. (Tr. 6712). (Finding VII(A)(12)).

The condition of widespread non-compliance with state minimum standards by Ohio schools demonstrates that most of the schools in the state *are not able to conform* to the "sound educational practices" standard expressed by the Department of Education and thus are not technically eligible for chartering. (Finding VII (A)(13)). (Our emphasis).

Thus, based upon the Department of Education's reports, the schools in Ohio are not in compliance with the State Board's minimum standards and must be regarded as submarginal by the State's own standards. It is beyond dispute that the minimum standards represent the lowest level at which instructional services should be provided in Ohio. William A. Harrison, Staff Director to the General Assembly's Education Review Committee, a witness called by the defendants, conceded that this is so. (Tr. 4956). (Finding VII (A)(14)).

The significance of the evidence of non-compliance by schools with state minimum standards is that the General Assembly has established a system of common schools throughout the state in which the overwhelming majority of the schools are substandard as measured by the state's own criteria. (Finding VII (A)(15)).

- (3.) Contrary To This Court's Conclusory Statement Of Fact, The Common Pleas Court Found That Disparities In Educational Opportunity Based Upon Property Wealth, As Well As Disparities Based Upon Tax Rates, Continue To Exist Among Ohio's School Districts Under The Equal Yield Formula.

THIS COURT:

Its [the "Equal Yield" formula's] objective is to equalize the property wealth base upon which the school districts raise operating revenue through the levy of voter-approved taxes 58 Ohio St. 2d at 371.

THE FINDINGS OF FACT:

Its objective *purports* to be that of "equalizing" the property wealth bases upon which the school districts raise operating revenue through the levy of voter-approved taxes (Tr. 1719, 1734). (Finding IV (2)). (Our emphasis).

The system does not equalize the ability of school districts to increase school millage rates, however. Nor does it purport to equalize the income wealth of the residents of school districts. Indeed, the "reward for effort" element operates to enlarge the disparities in school operating revenues which exist among the districts based upon their different tax rates and differing taxing abilities. Because the formula establishes an arbitrary property wealth ceiling of \$48,000 per pupil, which is lower than the tax duplicates of some of the districts, disparities in educational opportunity based upon property wealth, as well as disparities based upon tax rates, continue to exist among Ohio's school districts. (Tr. 4510-4512, 3186-3187). (Finding IV (3)).

- (4.) Contrary To This Court's Conclusory Statement Of Fact, The Common Pleas Court Found That The Equal Yield Formula Does Not Assure Each School District An Equal Number of Dollars For Each Mill Levied Up To Thirty Mills, Regardless Of The Property Wealth Of The District. Indeed, Millage Variations Explain Only 41% Of The Variations In Guaranteed Yield, Leaving 59% Of The Variations To Be Occasioned By Other Factors, Principally Property Values.

THIS COURT:

The Equal Yield Formula assures that each school district will receive an equal number of dollars for each mill levied up to 30 mills, regardless of the property wealth of the district. 58 Ohio St. 2d at 382.

THE FINDINGS OF FACT:

In a district power equalizing (DPE) formula which operates properly and achieves equal yield for equal effort, variations in the guaranteed yield (basic aid plus local revenues) should result from, and correlate directly with, variations in millage. (Tr. 3205) (Finding VIII-II (B)(7)).

But Ohio's DPE formula is not effective for even this purpose. Guaranteed yield is influenced by factors other than millage to such an extent that even at full funding the system is, to a great extent, haphazard. (Tr. 3206) (Finding VIII-II (B)(8)).

[E]ven at full funding, millage variations explain only 41% of the variations in guaranteed yield, leaving 59% of the variations to be occasioned by other factors. (Tr. 3204) (Finding VIII-II (B)(15)).

These other factors include mandates, save-harmless, local yield above the guaranteed level, actual v. equalized mills and most significantly, property values. (Tr. 3206). (Finding VIII-II (B)(16)).

(B.) The Court's Conclusion That The School Financing Plan Does Not Violate The Command Of The Ohio Constitution's Thorough And Efficient Clause Because No School District Receives So Little Local And State Revenue That The Students Are Effectively Being Deprived Of Educational Opportunity Is Demonstrably Contrary To The Comprehensive Findings Of The Trial Court Founded Upon The Massive Record In This Case.

It is clear from the majority's opinion that the Court's holding that Ohio's system for financing elementary and secondary education is not violative of the Ohio Constitution's thorough and efficient clause, as construed by this Court in *Miller v. Korns*, 107 Ohio St. 287 (1923), rests upon the majority's incorrect conclusion that the system does not place any school district in such financial destitution that the students therein are effectively deprived of educational opportunity, that the equal yield formula ensures each child an adequate education, and that even the school closings that occur under the Ohio system are educationally innocuous. Each of those conclusions is contrary to specific and comprehensive findings made by the Common Pleas Court. As we demonstrate herein, the trial court found that so many of the school districts in Ohio are underfunded that a majority of Ohio's school children are being denied educational opportunity, and that school closings have an irreparably harmful educational and psychological effect upon school children.¹

¹ The plaintiffs' proof of widespread educational deprivation was so comprehensive that on three separate occasions defendants' counsel objected to the plaintiffs calling any further witnesses to testify to it on the ground that such evidence had become cumulative. (Tr. 693, 750, 959.) In order to show the depth and breadth of the educational damage which the present system has brought to schoolchildren throughout Ohio, the plaintiffs interrogated more than forty witnesses who testified to educational deprivation which exists in twenty-four specific districts in the state, and showed, moreover, that because of the uniformity of inadequate funding in the majority of Ohio's school districts, submarginal educational conditions are pervasive throughout the state.

It was massive proof which gave rise to the trial court's hundreds of separate findings of fact concerning the nature and extent of educational deprivation which exists throughout Ohio as a direct result of the present school financing system. We urge this Court to apply its own chosen test to the findings of the court below. In so doing, inasmuch as the Equal Yield Formula's guarantee at 20 mills is *not* sufficient to ensure that each child receives an adequate education, this Court must conclude that the system devised by the General Assembly is *unconstitutional*.

- (1.) Contrary To This Court's Conclusory Statement Of Fact, The Common Pleas Court Found That Conditions Of Educational Deprivation Are Pervasive Throughout A Majority Of Ohio's School Districts And That The Present System Falls Far Short Of Delivering To The School Districts Sufficient Resources To Enable Them To Provide A Satisfactory Level Of Education To The Overwhelming Majority Of Ohio's Schoolchildren.

THIS COURT:

This court, therefore, intimated in *Miller v. Korns, supra*, that the wide discretion granted to the General Assembly is not without limits. For example, in a situation in which a school district was receiving so little local and state revenue that the students were effectively being deprived of educational opportunity, such a system would clearly not be thorough and efficient. 58 Ohio St. 2d at 387, footnote omitted.

* * *

To the extent that the Equal Yield Formula's guarantee at 20 mills is sufficient to ensure that each child receives an adequate education, the system devised by the General Assembly is constitutional. . . . 58 Ohio St. 2d at 387-88.

THE FINDINGS OF FACT:

Financial resources are so limited in the closing audit districts that in none of those districts are the children receiving more than barely minimal educational opportunities. The superintendents of those districts described the educational programs they are able to provide as "just able to get by" and below state minimum standards (Tr. 678), "barely adequate" (Tr. 709), not having enough money "to carry on an educational program" (Tr. 783), lacking "severely in the quality level" (Tr. 820), not allowing each child to exploit his individual talents to the fullest (Tr. 900, 981), "the bare minimum . . . just enough to be chartered". (Tr. 983). (Finding VII (E)(1)).

In the case of each of the districts so disadvantaged, the conditions are the direct result of a severe shortage of funds. (Finding VII (E)(2)).

The physical plants in the audit districts are inadequate, obsolete, not well maintained and inefficient. (Finding VII (E)(3)).

The physical plants in a school district are substantially educationally significant. Obsolete, poorly lighted, inadequately maintained school buildings impair teaching and learning efficiency and have a negative effect upon student morale and motivation. (Tr. 488-489, 816-817, 1005-1007, 1122-1124). (Finding VII (E)(4)).

The audit districts have been forced to reduce their professional and non-professional staffs, have exceedingly high pupil-teacher ratios and class sizes, and are unable to pay salaries high enough to attract teachers having substantial training and experience. (Finding VII (E)(7)).

The ratio of teaching staff to students is educationally significant. It bears a direct relationship to the quality of the educational program. Low pupil-teacher ratios are especially important for primary grade students and for students who have learning disabilities and special educational needs.

(Tr. 1165-6, 4458, 4669; 4670, 1385, 1471, 2150, 848-849, 1032). The educators who testified in this case were virtually unanimous in their agreement with this proposition. (Finding VII (E)(8)).

In the audit districts the curricula are restricted and the course offerings are limited to the "basic" subjects. Most of those districts have had to curtail the breadth of their course offerings in recent years due to financial shortages. (Finding VII (E)(11)).

A full range of curricula is essential to affording to all students the opportunity to fulfill their educational potentials, especially children with learning disabilities and gifted children. (Tr. 4458, 1166, 1169). (Finding VII (E)(12)).

The audit districts uniformly suffer from a shortage of textbooks and the financial inability to purchase up-to-date textbooks. (Finding VII (E)(17)).

It is beyond dispute that having up-to-date textbooks for every student is essential to providing even a minimal educational opportunity to children. (Tr. 1167) (Finding VII (E)(18)).

The children in the audit districts are similarly deprived of library books, educational equipment and educational supplies. (Finding VII (E)(20)).

The plaintiffs showed with documentary and statistical evidence and with expert testimony that in all likelihood the conditions of educational deprivation which exist in the audit districts also exist in all of the districts in the state which fall in the same range of dollars per pupil as do the audit districts. The number of districts which are similarly limited financially is 377. They comprise over 60% of the districts in the state. Eight hundred ninety-five thousand students are enrolled in those districts. (Tr. 3146) (Finding VII (F)(1)).

From the above evidence, the Court concludes that conditions of widespread educational deprivation which the testimony of the superintendents showed to exist in the closing

audit districts, exist throughout more than half of the school districts in this state. (Finding VII (F)(3)).

The same conditions of educational deprivation existing in the audit districts, which, with the exception of Toledo, are essentially rural, also exist in the principal urban, inner-city districts. The plaintiffs introduced substantial evidence of educational conditions in the Toledo, Cleveland and Columbus school districts, and presented comprehensive evidence of educational conditions in the Cincinnati City district, one of the representative plaintiffs. Based upon the testimony of Superintendent Briggs of the Cleveland district, Superintendent Dick of the Toledo district and Superintendent Ellis of the Columbus district concerning conditions in those districts, the conditions which the evidence shows to exist in the Cincinnati district are so essentially similar to those which exist in the other three urban districts that the Court regards them to be deserving of separate findings. (Finding VII (G)(1)).

As a result of these staff and curriculum limitations, the educational opportunities in the Cincinnati School district have declined quantitatively and qualitatively. (Tr. 1611, 2161). As a result the school children are generally grossly deficient in basic skills. (Tr. 1560). (Finding VII (G)(2.64)).

No secondary school in the district is totally in compliance with state minimum standards. (Tr. 2182). (Finding VII (G)(2.68)).

[T]he Court finds that the Cincinnati City School district is financially destitute, is starved for funds, lacks teachers, adequate buildings and equipment, and that the school children resident in that district are receiving submarginal educational opportunities. (Finding VII (G)(3)).

The Court finds that the Cleveland City School District is so starved for funds that public education in Cleveland is in a condition of virtual chaos. (Finding VII (G)(17)).

Thus, the Court finds that the Columbus City School district is so financially destitute, as are the Cincinnati, Toledo and Cleveland districts, and further finds that the quality of

public education in the large urban districts of this state is submarginal. None of these districts can survive under the present system. (Finding VII (G)(25)).

The Court finds from the overwhelming and uncontested evidence presented, including the descriptive testimony and unanimous opinions of the school superintendents and other experts on urban education, that the large urban, inner-city districts have unique and special problems and substantial extra costs which the non-urban districts do not have. . . . (Finding VII (G)(26)).

The problems of the urban school districts are related to the problems of the cities themselves. Urban problems such as poverty, unemployment and crime adversely affect the school children in inner-city districts. (Tr. 3887). The children from impoverished homes where educational and cultural levels are exceedingly low begin school with educational deficits. School districts which have to overcome those deficits require extra personnel in order to diagnose the deficits and then correct them. Indeed, the districts which have the largest concentration of students with educational and psychological problems should have the lowest ratios of professional staff to pupils. (Tr. 1471). The evidence indicates, however, that those urban districts have pupil-teacher ratios which are among the highest in the state. (Tr. 2594-9). The evidence also shows that the urban districts are among the lowest ranking districts in the state in expenditures for instruction. (Tr. 2954-9). This is the direct result of the fact that the urban districts lack the total financial resources necessary to deliver the educational resources which the children in those districts require. (See Findings VI(E)(2, 78), VI (E)(9), VI (E)(11) and VI(E)(18)). (Finding VI (G)(27)).

The Court also finds that the present system for financing public education in Ohio fails to compensate the urban districts for their substantial extra costs and fails to equip them to deal adequately with their special problems. Specifically,

the categorical grants including the grant called Disadvantaged Pupil Impact Aid fall woefully short of compensating the urban districts for their special costs. (Plaintiffs' Exh. 48, 30, Tr. 1418, 1495-1502, 1785-87, 2167-8). (Finding VII (G)(28)).

The Court further finds that as a result of that failure many of the children who attend school in the urban districts are substantially disadvantaged educationally. (Finding VII (G)(29)).

The school children who are enrolled in those districts which had total state and local support of less than \$1000 per pupil in 1975-76, received substandard educational services that year (Finding VII (G)(2.6)) and may be presumed to be receiving substandard educational services at the present time since school district costs are escalating at a greater rate than are school district revenues. (Finding VI(C)(7)). Sixty-two percent of Ohio's students were enrolled in districts which had less than \$1100 per pupil in total state and local support in 1975-76 (Finding VI(A)(14)) and they may similarly be presumed to be currently receiving educational services of the same level they received in 1975-76.

[T]he Court concludes that a substantial majority of Ohio's pupils (the 62% enrolled in the districts which had less than \$1100 total support per pupil in 1975-76) are presently receiving less than adequate educational services and opportunities. (Finding VII (I)(1.1)).

[I]t is clear that the school districts in this state generally fall far short of having sufficient resources to provide a satisfactory level of education to the overwhelming majority of Ohio's school children, and the Court so finds. Moreover, the present finance system falls far short of funding a system of public schools which can comply with the State Board of Education's minimum standards. That fact alone supports the finding that, by and large, the school children in Ohio are getting educationally shortchanged. (Finding VII (I)(1)(1.5)). (Our emphasis).

- (2.) Contrary To This Court's Conclusory Statement Of Fact, The Common Pleas Court Found That The School Closings That Occur Under The Present System Bring Irreparable Educational Harm To The Affected Students.

THIS COURT:

[P]laintiffs attempt to equate school closings with "educational deprivation," 58 Ohio St. 2d at 288.

THE FINDINGS OF FACT:

All of the children deprived of schooling as a result of school closings suffered educational losses. The educational development of the children was affected because a loss of a day of instruction can never be recaptured. (Tr. 540, 7412). The learning process of the children in kindergarten and in the early primary grades is disrupted more by closings than is that of the older children because the beginners forget at a faster rate than the more advanced students and, thus, have more to re-learn when they return. (Tr. 675, 704, 614, 688). (Finding VII (D)(1)).

Although the lost days are made up during the second half of the school year, the loss in sequential learning cannot be made up. (Tr. 540). High school seniors are affected adversely by prolonged school years because their time to earn money for college or to hunt for jobs is curtailed. (Tr. 703-4). (Finding VII (D)(2)).

School closings and levy defeats also damage student morale and teacher morale. This damage has a detrimental effect upon the educational process. Students are also hurt psychologically by school closings. (Tr. 614-5, 675-6, 688, 739-40, 811). (Finding VII (D)(3)).

III. This Court Has Violated Its Own Customary Procedural Rule And In So Doing Has Deprived The Plaintiffs Of Due Process Of Law And Equal Protection Of The Laws Guaranteed By The Fourteenth Amendment To The United States Constitution.

The nearly 400 page findings of fact of the trial court were adopted in their entirety by the Court of Appeals. For decades litigants in Ohio have been bound by "the established practice of the Supreme Court to refuse to weigh the evidence to determine . . . whether correct conclusions as to the facts were reached by the court below."² Indeed, this Court has stated that "no court of review is permitted upon appeal . . . to substitute its judgment as to conclusions of fact for that of the trier of the facts".³

The decision of this Court is based on numerous factual assertions which are in direct conflict with the trial court's affirmed findings of fact. Those findings, which were based upon the trial judge's passing upon the credibility of the numerous witnesses and upon his weighing of the evidence, are fully supported by the record in this case. Defendants-appellants have never disputed this fact.

This Court's violation of its long-standing rule of practice by ignoring the affirmed findings of fact and devising contrary findings has deprived the plaintiffs of federal constitutional rights guaranteed by the due process of law clause, the equal protection of laws clause and the privileges and immunities clauses of the Fourteenth Amendment. The deprivation of federal constitutional rights suffered by plaintiffs as a result of

² *State ex rel. Pomeroy v. Webber*, 2 Ohio St. 2d 84, 85 (1965). *Accord*, 5 Ohio Jurisprudence 3d 167 § 593 (1978):

. . . it is and has been for many decades the established practice of the Supreme court to refuse to weigh the evidence to determine . . . whether correct conclusions as to the facts were reached by the court below. (footnote omitted).

³ *Gates v. Board of Education*, 11 Ohio St. 2d 83, 86 n.4 (1967).

this Court's arbitrary decision not to follow its own stated rule of practice impels the Court to set this matter for rehearing.⁴

(A.) The Court's Decision Violates The Federal Due Process Rights Of The Plaintiffs

It is axiomatic that this Court is constitutionally required to provide due process of law in accordance with the mandates of the Fourteenth Amendment.⁵ Due process of law is an evolving concept, the importance of which to our society has been described by the United States Supreme Court as follows:

Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner.

Boddie v. Connecticut, 401 U.S. 371, 374 (1971).

Due process of law has been variously defined to mean "fair

⁴ This Court must always keep before it that the provisions of the Federal Constitution are the supreme law of the land, *Zanesville v. Wilson*, 51 Ohio App. 433 (Ct. App. Muskingum Co.), *aff'd*, 130 Ohio St. 286 (1935) and that no right granted or secured by the United States Constitution can be impaired in any manner by a law or pronouncement of a state governmental agency. *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540 (1902). Any state practice, no matter how clearly within a state's acknowledged power, which interferes with or is contrary to the United States Constitution, must yield. *Free v. Bland*, 369 U.S. 663, 666 (1962); Article VI, Clause 2, United States Constitution.

⁵ It is the sworn duty of this Court to uphold the United States Constitution. Ohio Constitution, Article XV, Section 7; Ohio Revised Code § 3.23.

procedure,"⁶ "fair, right and just" procedures,⁷ and "fundamental fairness in the light of the total circumstances."⁸

Citizens are entitled to due and regular process not only in the pleading, hearing and consideration of their litigated claim, but also in the *disposition* of their litigated claim.⁹

Generally, due process does not require that a state provide for appellate review of civil cases. However, where the state does provide a means of appeal, the appeal process which is created "must be exercised without discrimination."¹⁰ Such discrimination occurs in violation of the Fourteenth Amendment when a case between litigants is arbitrarily decided by a court "in violation of settled principles of law and contrary to undisputed facts."¹¹

Furthermore, the United States Supreme Court has stated that in the review of a criminal case on appeal:

To conform to due process of law, petitioners were entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court.

Cole v. Arkansas, 333 U.S. 196, 202 (1948).

⁶ *Poe v. Charlotte Memorial Hospital, Inc.*, 374 F. Supp. 1302, 1311 (W.D. N.C. 1974) (3 Judge Court).

⁷ "Due process is that which comports with the deepest notions of what is fair and right and just." *Solesbee v. Balkom*, 339 U.S. 9, 16 (1950) (Frankfurter, J. dissenting).

⁸ *Whitfield v. Simpson*, 312 F. Supp. 889, 874 (E.D. Ill. 1970) (3 Judge Court); *Buttny v. Smiley*, 281 F. Supp. 280, 288 (D. Colo. 1968).

⁹ *Martin v. Neuschel*, 396 F.2d 759, 760 (3rd Cir. 1968).

¹⁰ *National Union of Marine Cooks & Stewards v. Arnold*, 348 U.S. 37, 43 (1954). Accord, *Oppenheimer v. Roth*, 468 F.2d 901, 902 (9th Cir. 1972); *In re Brown*, 439 F.2d 47, 51 (3rd Cir. 1971) (en banc); *Compton v. Naylor*, 392 F. Supp. 575, 578 (N.D. Tex. 1975) (3 Judge Court).

¹¹ *Williams v. Tooke*, 108 F.2d 758, 759 (5th Cir.), cert. denied, 311 U.S. 655 (1940), citing, *Postal Telegraph Cable Co. v. Newport, Ky.*, 247 U.S. 464 (1918).

The plaintiffs submit that this Court's action in arbitrarily choosing not to follow its long-standing practice not to substitute its judgment as to findings of fact for that of the trier of facts is an unpredictable, unfair, non-rational and discriminatory disposition of their claims in violation of the due process clause of the Fourteenth Amendment.

(B.) The Effect Of This Court's Decision Is That Of Denying The Plaintiffs Access To The Courts

The right to meaningful access to the courts of a state is a fundamental right protected by the due process¹² and privileges and immunities¹³ clauses of the Fourteenth Amendment and by the redress of grievances¹⁴ provision of the First Amendment. The right to meaningful access to the courts has always meant that all litigants will have like access and equal treatment by the courts. As early as 1885, the United States Supreme Court stated that all persons

. . . should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pur-

¹² *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *Procurier v. Martinez*, 416 U.S. 396, 419 (1974); *Moeck v. Zajackowski*, 541 F.2d 177, 180 (7th Cir. 1976); *Silver v. Cormier*, 529 F.2d 161, 163 (10th Cir. 1976); *Hall v. Maryland*, 433 F. Supp. 756 (D. Md. 1976); *Hooks v. Wainwright*, 352 F. Supp. 163, 167 (M.D. Fla. 1972).

¹³ *Angel v. Bullington*, 330 U.S. 183, 188 (1947); *Broderick v. Rosner*, 294 U.S. 629, 642 (1935); *Canadian Northern R. Co. v. Eggen*, 252 U.S. 553, 560 (1920); *Slaughter-House Cases*, 83 U.S. 394, 409 (1872); *Crandall v. Nevada*, 73 U.S. 744, 747 (1867). See also, *Cordfield v. Coryell*, 6 Fed Cases 3230 (1823).

¹⁴ *Cruz v. Beto*, 405 U.S. 319, 321 (1972); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576, 585 (1971); *Dreyer v. Jalet*, 349 F. Supp. 452, 484 (S.D. Tex. 1972), aff'd, 479 F.2d 1044 (5th Cir. 1973).

suits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition. . . . *Barbier v. Connolly*, 113 U.S. 27, 31 (1885).¹⁵

Plaintiffs-appellees and cross appellants submit that their right to like and meaningful access to the courts and equal treatment by those courts is denied when this Court arbitrarily imposes a different rule of practice upon them than upon all other litigants.

(C.) This Court Has Denied The Plaintiffs The Equal Protection Of The Laws

The equal protection clause of the Fourteenth Amendment prohibits a State from drawing a legal line which constitutes an invidious discrimination against a particular class of citizens.¹⁶

In determining whether a state-established classification violates the equal protection clause, the Court must decide whether duties or burdens different from those resting upon the general public are cast upon the class.¹⁷ The equal protection guarantee means that the rights of all citizens must

¹⁵ See also, *Chambers v. Baltimore & Ohio R. Co.*, 207 U.S. 142, 148 (1907):

The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States but is granted and protected by the Federal Constitution.

¹⁶ *Stanley v. Illinois*, 405 U.S. 645, 652 (1972); *Levy v. Louisiana*, 391 U.S. 68, 71 (1968).

¹⁷ *Atchison, Topeka & Santa Fe R. Co. v. Matthews*, 174 U.S. 96, 104-05 (1899).

rest upon the same rule under similar circumstances, and applies to the exercise of all the powers of a state which can affect the individual or his property.¹⁸ In short, all persons similarly circumstanced must be treated alike.¹⁹

While this Court has now decided that children do not have a fundamental right to an education in this State, nonetheless, those children do have a legitimate entitlement to a public education as a property interest which is protected by the Fourteenth Amendment.²⁰ In addition, as pointed out in the previous section, those children have a fundamental constitutional right to like and meaningful access to the courts and equal treatment by the courts.²¹

This Court's decision creates two classes of litigants. Heretofore, all litigants in this State were treated alike in that unless no evidence existed to support a trial court's finding, the reviewing court could not substitute its judgment as to a finding of fact for that of the trier of facts.²² This Court's failure to apply that same rule to the present litigants is an act of

¹⁸ *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 37 (1928); *Maxwell v. Bugbee*, 250 U.S. 525, 541 (1919); *Southern R. Co. v. Greene*, 216 U.S. 400, 412 (1910); *Bell's Gap R. Co. v. Pennsylvania*, 134 U.S. 232, 238 (1889).

¹⁹ *Johnson v. Robison*, 415 U.S. 361, 374-75 (1974).

²⁰ *Goss v. Lopez*, 419 U.S. 565, 573-74 (1975).

²¹ The equal protection clause, while not affording a litigant a right of appeal, does guarantee that if an appellate process is provided all litigants are to be treated alike. *Lindsey v. Normet*, 405 U.S. 56, 77 (1972); *Javits v. Stevens*, 382 F. Supp. 131, 140 (S.D. N.Y. 1974). Indeed, the United States Supreme Court has ruled that state courts that apply a rule of procedure in a discriminatory manner run afoul of the Fourteenth Amendment. *Douglas v. California*, 372 U.S. 353 (1963).

²² *G.S.T. v. Avon Lake*, 48 Ohio St. 2d 63 (1976); *In re Estate of Duiguid*, 24 Ohio St. 2d 137 (1970); *Gates v. Board of Educ.*, 11 Ohio St. 2d 83 (1967); *Gillen-Crow Pharmacies, Inc. v. Mandzak*, 5 Ohio St. 2d 201 (1966); *State ex rel. Pomeroy v. Webber*, 2 Ohio St. 2d 84 (1965); *Jaffrin v. DiEgidio*, 152 Ohio St. 359 (1949); *Union Properties, Inc. v. Cleveland Trust Co.*, 152 Ohio St. 430 (1949); *McKellips v. Industrial Comm. of Ohio*, 145 Ohio St. 79 (1945); *In*

invidious discrimination against those litigants which violates their constitutional right to equal protection of the laws.

IV. Conclusion

In his famous dissenting opinion in *Northern Securities Company v. United States*, 193 U.S. 197, 400-2 (1903) (Holmes, J. dissenting), Justice Holmes laid down a principle of judicial behavior which should guide this Court to apply its customary procedure of adhering to the trial court's findings of fact, even in this case of overriding political consequence:

Great cases, like hard cases, made bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful and before which even well settled principles of law will bend. (our emphasis)

In deciding such a case, as this one is, a court should proceed in the same manner as if it were deciding a routine case, in Holmes' words, "with the same natural and spontaneous interpretation that one would be sure of if the question arose upon an indictment for a similar act which excited no public attention, and was of importance only to the prisoner before the court."

Thus, in reviewing the judgments of the courts below, this

re Estate of Lowry, 140 Ohio St. 223 (1942); *State ex rel. Kobelt v. Baker*, 137 Ohio St. 337 (1940); *Peer v. Industrial Comm. of Ohio*, 134 Ohio St. 61 (1938); *State ex rel. Puehler v. Board of Educ.*, 134 Ohio St. 280 (1938); *Maus v. Auglaize Bank*, 125 Ohio St. 32 (1932); *F.W. Woolworth Co. v. Kinney*, 121 Ohio St. 462 (1929); *Hamilton v. Dilley*, 120 Ohio St. 127 (1929); *Katz v. American Finance Co.*, 112 Ohio St. 24 (1925); *McNab v. Board of Park Comm.*, 108 Ohio St. 497 (1923); *Sutter v. State ex rel. Maul*, 108 Ohio St. 309 (1923); *Ohio Collieries Co. v. Cocke*, 107 Ohio St. 238 (1923); *Taylor v. Flower Deaconess Home and Hospital*, 104 Ohio St. 61 (1922); *Foster v. Scottish Union & Natl. Ins. Co.*, 101 Ohio St. 180 (1920).

Court must apply its customary rule of accepting the supportable findings of the Common Pleas Court that "the school districts in this state generally fall short of having sufficient resources to provide a satisfactory level of education to the overwhelming majority of Ohio's school children" as it would a finding of a trial court in an automobile accident case that a defendant was driving his vehicle 90 miles an hour through a crowded intersection.

In upholding the Ohio system for financing elementary and secondary education, this Court's majority not only cast aside evolving, enlightened principles of constitutional law and consigned the rights of Ohio's schoolchildren to a constitutional limbo, it violated its own time-honored practice of adhering to the affirmed findings of fact of the Court of Common Pleas. That is the import of dissenting Justice Locher's statement that, "the majority opinion flies square in the face of reality, not to mention the findings of fact and conclusions of law of the trial court and the Court of Appeals." 58 Ohio St. 2d at 391.

As demonstrated above, in deciding this case in that manner, this Court violated the federal constitutional rights of the plaintiffs.

The Court cannot rectify that constitutional violation by any means less drastic than granting this motion for rehearing and scheduling this case for reargument.

Respectfully submitted,

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[CERTIFICATE OF SERVICE OMITTED]

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,) 1979 TERM
) To wit: July 18, 1979
 City of Columbus)

No. 78-1284

Board of Education of the City School
District of the City of Cincinnati, et al.,
Appellees and Cross-Appellants,

vs.

Franklin B. Walter, et al.,
Appellants and Cross-Appellees.

REHEARING

It is ordered by the court that rehearing in this case is denied.

I, THOMAS L. STARTZMAN, of Clerk the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. Page

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 18th day of July, 1979.

THOMAS L. STARTZMAN, Clerk.

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE
CITY OF CINCINNATI ET AL., APPELLEES AND CROSS-
APPELLANTS, V. WALTER ET AL., APPELLANTS AND
CROSS-APPELLEES.

[Cite as Bd. of Edn. v. Walter (1979), 58 Ohio St. 2d 368.]

Schools—Financing—Constitutionality of statutory system.

The statutory system established by the General Assembly for the financing of public elementary and secondary education (R. C. 3317.022; R. C. 3317.023[A], [B] and [C]; R. C. 3317.02[E]; R.C. 3317.53[A]; and Section 30 of Am. Sub. S. B. 221 effective November 23, 1977) does not violate either Section 2 of Article I, or Section 2 of Article VI of the Ohio Constitution.

(No. 78-1284—Decided June 13, 1979.)

APPEALS from the Court of Appeals for Hamilton County.

This cause was filed in the Court of Common Pleas of Hamilton County as a declaratory judgment action on April 5, 1976, seeking to have the Ohio system of financing public elementary and secondary education declared unconstitutional under the Ohio Constitution. The trial court decided that the cause was a proper class action, and the following constitute the parties plaintiff:

- (A) The Board of Education of the City School District of the City of Cincinnati;
- (B) Members of that board;
- (C) The Superintendent of Schools for the City School District of the City of Cincinnati;
- (D) The Clerk-Treasurer of the City School District of the City of Cincinnati;
- (E) The named students who reside in the City School

District of the City of Cincinnati and who attend the Cincinnati public schools;

(F) The named parents of children attending such schools who also are owners of real property located in the Cincinnati School District;

(G) All of the above in their representative capacities and as representative parties on behalf of all similarly situated school districts in Ohio, the members of the boards of education for such school districts, all administrators employed by such school districts, the students who reside therein and attend public elementary and secondary schools operated by such school districts, the parents of such students, and the owners of real property situated in such school districts.

The trial was commenced on December 6, 1976, and consisted of 78 days of testimony, including the testimony of approximately 77 witnesses and the introduction of approximately 2,400 exhibits. The record consists of 7,530 pages of transcript.

The trial court held for the plaintiffs and declared certain statutory provisions in Ohio's school finance system void and inoperative under both Section 2 of Article VI, the Thorough and Efficient Clause, and Section 2 of Article I, the Equal Protection and Benefit Clause of the Ohio Constitution. In so doing, the trial court adopted and filed approximately 400 pages of findings of fact and 35 conclusions of law submitted by plaintiffs.

The defendants appealed to the Court of Appeals for Hamilton County. On Setember 5, 1978, the court issued its judgment affirming in part, and reversing in part, the trial court's decision. The Court of Appeals affirmed the trial court's holding that the statutory plan for financing elementary and secondary education violates the Equal Protection Clause of the Ohio Constitution but reversed the trial court's holding that the system violates the Thorough and Efficient Clause of the Ohio Constitution.

The defendants appeal from that part of the Court of

Appeals' judgment which held that the present system violates Ohio's Equal Protection Clause, while the plaintiffs cross-appeal from that part of the judgment which held that the system does not violate the Thorough and Efficient Clause.

The cause is now before this court pursuant to the allowance of a motion and cross-motion to certify the record.

Mr. John A. Lloyd, Jr., and Ms. Nancy A. Lawson, for appellees and cross-appellants.

Mr. William J. Brown, attorney general, *Mr. David H. Beaver* and *Mr. Henry A. Arnett*, for appellants and cross-appellees.

WILLIAM B. BROWN, J.

I.

The various provisions of Ohio law which are challenged in this litigation revolve around the allocation formula contained in R. C. 3317.022. That section provides the principal rule for state basic aid allocation, while the other challenged provisions adjust for cost differences among districts and facilitate the transition from the former formula to the guaranteed yield formula.

R. C. 3317.022 contains a two-part formula under which each school district participating in the state basic aid program is guaranteed:

"[T]he same number of dollars per pupil, *in state and local funds combined*, for each mill of local property tax effort as in any other district, up to a maximum millage rate set by the state [30 mills]." (Education Review Committee Report, December 15, 1974, at page 3; see fn. 1, *infra*.)

This "equal yield for equal effort" formula is calculated for each district by a formula which pegs the level of each district's state funding to a mathematically "equalized" level of property wealth and a mathematically "equalized" tax rate. The law requires that each school district levy at least 20

mills in order to participate, and it rewards districts which levy more than 20 school operating mills commensurately with their millage up to 30 mills. This last element is called "reward for effort." The entire basic support formula is referred to as "guaranteed yield" and "equal yield" and is a variation of a type of school financing called "district power equalizing," "power equalizing," "DPE," and "percentage equalizing." Its objective is to equalize the property wealth base upon which the school districts raise operating revenue through the levy of voter-approved taxes so that school districts receive the same number of dollars per pupil in basic state aid plus local revenue for each mill up to 30 mills.

The first step in the State Basic Aid Formula provides for a total yield of \$48 per pupil per mill from both local revenue and state support for the first 20 mills, assuming the system is fully funded. This means that, if all the districts received all the local tax revenues which they were presumed under the formula to receive, each district in the state which levies 20 mills would be eligible to receive from local and state funds 20 mills x \$48 or \$960 per pupil. The state in that manner provides the basic support to each school district for the first 20 mills by making up the difference between the district local yield per pupil per mill and \$48.

The second calculation for state basic aid is the element of the state finance system called "reward for effort," wherein the state pays a bonus to and rewards school districts for their school operating millage above 20 mills up to 30 mills. For that quantum of funding, the guaranteed level is pegged at \$42 per pupil per mill. Since the purpose of the act is to pay extra monies to districts based upon the number of mills they levy beyond 20 mills, the procedure is to deduct the district's local yield per pupil per mill from \$42 and multiply that difference by the number of students (Average Daily Membership [ADM]) and finally by the "equalized" millage in excess of 20 up to 30.

The enactment by the General Assembly of a guaranteed yield formula inherently involves a policy decision as to the

funding level or the amount to be guaranteed through the formula. The General Assembly's decision was to establish a funding level of \$960 per pupil at 20 mills up to \$1,380 per pupil at 30 mills.

That policy decision was based upon the recommendation of the Education Review Committee.¹ The committee in the "Goettle Report" found that the 1973-1974 cost for a school district to operate at the state minimum standards which define a general education of high quality was \$715 per pupil. The committee, therefore, reasoned that the \$960 guarantee at 20 mills was sufficient to provide an adequate program in each district. The committee also recognized that the funding level would necessarily have to be increased as inflation continued to increase the cost of education.

In addition to state basic aid, certain school districts also receive additional state aid under the "save harmless" guarantee. This provision guarantees that a school district will not receive less under the new "Equal Yield Formula" than it did under the former funding system. The state also provides direct grants to school districts which offer specialized programs. Finally, the system rewards or penalizes school districts depending upon their compliance or non-compliance with certain mandated requirements.

II.

The first issue presented to this court for decision is whether Ohio's statutory system for financing elementary and secondary education violates the Equal Protection and Benefit Clause, Section 2, Article I of the Ohio Constitution.

¹ The Education Review Committee was established in 1973 and continues to function. It is a joint, nonpartisan legislative committee created by the General Assembly to analyze Ohio's school finance system and to consider alternative distribution methods for allocating state basic aid. It has been funded so as to have carried out those legislative directions and so as to have developed independent research capabilities to enable ongoing study and monitoring of the new formula.

The trial court's declaratory judgment order stated that the system establishes invidious classifications among Ohio's school children which are neither supported by any compelling state interest nor predicated upon any rational basis, resulting in a violation of the Equal Protection Clause. The Court of Appeals affirmed the trial court's findings and agreed that Section 2 of Article I of the Ohio Constitution provides Ohio's school-age children with a "fundamental right" to equal educational opportunity.

Defendants argue that the lower courts should be reversed on this issue because: (1) Ohio's system is rationally designed to allow local control in making decisions about services to be provided to meet perceived educational needs; (2) education is not a fundamental interest and, therefore, the financing system should not be subjected to "strict scrutiny"; and (3) even if the system is subjected to "strict scrutiny," local control is a compelling state interest justifying disparity of educational opportunity.

THE TWO-TIERED TEST FOR APPLYING THE EQUAL PROTECTION STANDARD

The courts below applied the "two-tiered test," formulated by the United States Supreme Court to Ohio's Equal Protection Clause. Defendants allege no impropriety with the application of that test and, indeed, this court has consistently applied federal guidelines in construing the Ohio Constitution's Equal Protection and Benefit Clause. *Porter v. Oberlin* (1965), 1 Ohio St. 2d 143; *State, ex rel. Struble v. Davis* (1937), 132 Ohio St. 555.

Simply stated, the test is that unequal treatment of classes of persons by a state is valid only if the state can show that a rational basis exists for the inequality, unless the discrimination impairs the exercise of a fundamental right or establishes a suspect classification. See, e. g., *McGowan v. Maryland* (1961), 366 U.S. 420, for the traditional scrutiny test; see, e. g., *Shapiro v. Thompson* (1969), 394 U. S. 618; *Harper v.*

Virginia Bd. of Elections (1966), 383 U. S. 663; *Griswold v. Connecticut* (1965), 381 U. S. 479, for a discussion of "fundamental interest"; and see, e. g., *Graham v. Richardson* (1971), 403 U. S. 365; *Loving v. Virginia* (1967), 388 U. S. 1; *Oyama v. California* (1948), 322 U. S. 633. If the discrimination infringes upon a fundamental right, it becomes the subject of strict judicial scrutiny and will be upheld only upon a showing that it is justified by a compelling state interest. That is, once the existence of a fundamental right or a suspect class is shown to be involved, the state must assume the heavy burden of proving that the legislation is constitutional. See, e. g., *Eisenstadt v. Baird* (1972), 405 U.S. 438, 447, footnote 7; *Dunn v. Blumstein* (1972), 405 U. S. 330, 342; *Memphis Am. Fed. of Teachers, Local 2032 v. Bd. of Edn.* (C. A. 6, 1976), 534 F. 2d 699; *Tanner v. Weinberger* (C. A. 6, 1975), 525 F. 2d 51, 54. The preeminent consideration is that "equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right." *Massachusetts Board of Retirement v. Murgia* (1976), 427 U. S. 307, 312. See, also, *Carey v. Population Services Intl.* (1977), 431 U.S. 678; *Maher v. Roe* (1977), 432 U. S. 464; *Zablocki v. Redhail* (1978), 434 U. S. 374. "When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." *Id.*, at page 388.

(1) STRICT SCRUTINY

The first step in applying the "strict scrutiny test" is to determine if a "fundamental interest" is affected. The United States Supreme Court in *San Antonio Indep. School Dist. v. Rodriguez* (1973), 411 U. S. 1, 33, stated that:

"[T]he key to discovering whether education is 'fundamental' is not to be found in comparisons of the relative societal significance of education . . . Rather, the answer lies in

assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution."

Indeed, if this court were to accept this test, educational opportunity would be a fundamental interest entitled to strict scrutiny. However, we reject the "*Rodriguez* test" for determining which rights are fundamental. While the test may have some applicability in determining which rights are fundamental under the Constitution of the United States, it is not helpful in determining whether a right is fundamental under the Ohio Constitution. The Constitution of the United States is one of delegated powers and all "powers not delegated to the United States, nor prohibited to the state, are reserved to the States respectively, or to the people."²

On the other hand, the Ohio Constitution is not one of limited powers, as it contains provisions which would be suitable for statutory enactment which are not considered fundamental to our concept of ordered liberty, e. g., workers' compensation.³

Furthermore, the test set out in *Rodriguez, supra*, may not even be adequate for deciding what rights are fundamental under the United States Constitution. We note with approval the analysis of the test found in *Robinson v. Cahill* (1973), 62 N. J. 473, 303 A. 2d 273, where the Supreme Court of New Jersey, at page 491, stated:

"[W]e have not found helpful the concept of a 'fundamental' right. No one has successfully defined the term for this purpose. Even the proposition discussed in *Rodriguez*, that a right is 'fundamental' if it is explicitly or implicitly guar-

² Amendment X to the United States Constitution.

³ Accord, *Olsen v. State, ex rel. Johnson* (1976), 276 Ore. 9, 554 P. 2d 139. The Oregon Supreme Court held that such a test was not helpful because, if it were to be applied literally, it would, for example, make the right to sell and serve liquor by the drink a fundamental interest entitled to "strict scrutiny" because it is contained in the Oregon State Constitution.

See, also, *Shofstall v. Hollins* (1973), 110 Ariz. 88, 515 P. 2d 590; *Thompson v. Engelking* (1975), 96 Idaho 793, 537 P. 2d 635.

anteed in the Constitution, is immediately vulnerable, *for the right to acquire and hold property is guaranteed in the Federal and State Constitutions, and surely that right is not a likely candidate for such preferred treatment.* And if a right is somehow found to be 'fundamental,' there remains the question as to what State interest is 'compelling' and there, too, we find little, if any light." (Emphasis added.)

Finally, because this cause deals with difficult questions of local and statewide taxation, fiscal planning and education policy, we feel that this is an inappropriate cause in which to invoke "strict scrutiny." This case is more directly concerned with the way in which Ohio has decided to collect and spend state and local taxes than it is a challenge to the way in which Ohio educates its children.⁴

(2) TRADITIONAL SCRUTINY

Under the traditional test of equal protection, unequal treatment of classes of persons by a state is valid if the state can show that a rational basis exists for the inequity. Ordinarily, under the rational basis requirement, any classification based "upon a state of facts that reasonably can be conceived to constitute a distinction, or differences in state policy . . ." will be upheld. *Allied Stores of Ohio v. Bowers* (1959), 358 U. S. 522, 530.

This court, in adopting this standard, has held that every statute is presumed constitutional and can be declared invalid only when its unconstitutionality is shown *beyond a reasonable doubt*. Paragraph one of the syllabus in *State, ex rel. Dickman, v. Defenbacher* (1955), 164 Ohio St. 142, states⁵:

⁴ The granting of broad discretion as to classification by a legislature in the field of taxation has long been recognized. See *Madden v. Kentucky* (1940), 309 U. S. 83, 87-88; *Lehnhausen v. Lake Shore Auto Parts Co.* (1973), 410 U. S. 356; *Wisconsin v. J. C. Penney Co.* (1940), 311 U. S. 435, 445.

⁵ This court has more recently repeated the strict evidentiary test which plaintiffs must meet in *State, ex rel. Lukens, v. Brown* (1973),

"An enactment of the General Assembly is presumed to be constitutional, and before a court may declare it unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible."

It is against this standard that we must determine if a violation of the Equal Protection and Benefit Clause exists here.

Defendants admit that disparity exists in per pupil expenditures throughout Ohio's school districts. This disparity exists because of differences in property wealth and the willingness or unwillingness of voters in a particular school district to pass operating levies. However, defendants maintain that such disparate treatment has a rational basis and that plaintiffs have failed to prove beyond a reasonable doubt that disparate treatment is arbitrary and therefore unconstitutional. Defendants argue that Ohio's system is designed to allow local control in the making of decisions concerning the nature and extent of services to be provided to meet perceived educational needs. While assuring that all districts will have the fiscal resources to meet state minimum standards, defendants argue, that, by maintaining the ability of local school districts to tax themselves beyond the 20 mill minimum taxing level, the formula operates to retain local citizen control of education through the tax referendum. This local control, defendants maintain, allows the local citizenry to decide what type of education (beyond state required basics) is best suited for the children of their community.

We find local control to be a rational basis supporting Ohio's system of financing elementary and secondary education. By local control, we mean not only the freedom to devote more money to the education of one's children but also

34 Ohio St. 2d 257; e. g., *State, ex rel. Jackman, v. Court of Common Pleas* (1967), 9 Ohio St. 2d 159; *In re Trust Estate of Ely* (1964), 176 Ohio St. 311.

control over and participation in the decision-making process as to how those local tax dollars are to be spent.

The history of public education in Ohio is essentially a history of local control over education and the use of property as the primary means to finance that education. The use of land to support schools in Ohio pre-dates its admission to the Union. The Ordinance of 1785 provided that lot No. 16 of each township in the Northwest Territory be reserved for the maintenance of public schools within said township.

Pursuant to the Ohio Constitution of 1802,⁶ the General Assembly in 1821 enacted a bill enabling local schools and school districts to be organized (19 Ohio Laws 51); and in 1825, the tradition of utilizing real property taxation to support public schools began when the General Assembly passed a bill directing county commissioners to levy a real property tax of one-half of one mill to support local public schools (23 Ohio Laws 36).

During the remainder of the Nineteenth Century, local property taxes continued to be the sole means of support for local public schools. However, when shifts in population due to the growth of commercial and industrial centers began to create disparities in local resources, Ohio undertook a program in 1906 calling for a large measure of state financial participation. This program was commonly referred to as "state aid for weak school districts." (98 Ohio Laws 200.) The goal of this program was to provide some minimum support to the poorer school districts. Thus, early as 1906, the Ohio General Assembly established for school funding purposes a financial partnership between state government and local school districts.

The history of educational funding in Ohio, therefore, has

⁶ The Ohio Constitution of 1802 stated, in pertinent part:

"• • • But religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience." (Article VIII, Section 3, of the Ohio Constitution of 1802.)

been an accommodation between two competing interests—the interest in local control of educational programs and the means to fund them and the interest of the state in insuring that all children receive an adequate education. This phenomenon is not peculiar to Ohio. As stated by Professor Coleman:

"The history of education since the industrial revolution shows a continual struggle between two forces: the desire by members of society to have educational opportunity for all children, and the desire of each family to provide the best education it can afford for its own children." Coleman in Foreword to Strayer-Haig, *The Financing of Education in the State of New York* (1923), at vii.

Ohio has continued this financial partnership with local school districts until the present day. In 1935, the General Assembly enacted the first Foundation Program (116 Ohio Laws 585, 587), providing substantial financial aid to school districts. This program consisted of a flat distribution to each school district, based on average daily attendance, and "additional aid" for poorer school districts. The "additional aid" helped equalize the funds available for each school student in all districts across Ohio.

During the 21 years the Foundation Program was in effect, it was amended numerous times, and each amendment had the effect of increasing the amount of state aid. The amount of minimum "local effort" required to be levied by local school districts in order to receive "additional aid" also was increased gradually from 3 mills to 10 mills by 1955. Despite the increase in the total amount of state aid, the percentage of state support of local school districts' total operating costs dropped considerably.

Effective in 1956, Am. S. B. No. 321 (126 Ohio Laws 288) was enacted, which changed the format of state aid from "average daily membership" to a "teacher-unit" plan of state support. That enactment increased state aid to local school districts once again.

By the 1965-1966 school year, the state was providing approximately one-third of the total operating costs, with the local property tax furnishing the remainder. The General Assembly enacted Am. Sub. H. B. No. 950 (131 Ohio Laws 2024), which resulted in increased state aid to local school districts. Further legislation in the late 1960's and early 1970's further increased state support.

In fiscal year 1975-1976, the General Assembly enacted the Equal Yield Formula contained in Am. Sub. S. B. No. 170 (see Part I, *supra*) (136 Ohio Laws 475) which provides an equal sum of money (local and state combined) on a per-pupil-per-mill basis, for each qualifying school district, *i. e.*, one that has levied 20 mills for current operating expenses. (Voted millage, millage inside the unvoted 10-mill limitation for operation and the voted millage for joint vocational school district operation are included in this requirement.) The Equal Yield Formula approach represents a continuation of the partnership between the state and the local school districts. Presently, however, state support is far greater than ever before.⁷

Therefore, Ohio has historically attempted to ameliorate disparity in the levels of expenditures without destroying the virtues of local control. The present relationship is a result of over 150 years of experience in which Ohio has continually attempted to satisfy these competing interests.

We conclude that local control provides a rational basis supporting the disparity in per pupil expenditures in Ohio's school districts. This conclusion is valid from an historical point of view, and is also supported by conventional wisdom

⁷ State support was \$558,958,899 in fiscal year 1971; \$1,224,329,776 (including property tax relief) in fiscal year 1976; and \$1,399,905,919 (including property tax relief) in fiscal year 1978. Committee Staff, Education Review Committee of the Ohio General Assembly, Selected Statistics on Trends and Sources of Financial Support for Elementary and Secondary Education in Ohio. (November 15, 1978.)

concerning educational policy.⁸ In addition to allowing people within a school district to determine how much money they are willing to devote to education, local control allows for local participation in the decision-making process that determines how these local tax dollars will be spent. Each school district can develop programs to meet perceived local needs.

We agree with the observation of Chief Justice Burger, who stated, in a dissenting opinion, in *Wright v. Council of the City of Emporia* (1972), 407 U. S. 451, at 478:

"Local control is not only vital to continued public support of the schools, but it is of overriding importance from an education standpoint as well. The success of any school system depends on a vast range of factors that lie beyond the competence and power of the courts. Curricular decisions, the structuring of grade levels, the planning of extracurricular activities, to mention a few, are matters lying solely within the province of school officials, who maintain a day-to-day supervision that a judge cannot. A plan devised by school officials is apt to be attuned to these highly relevant educational goals"

Additionally, local control also provides an opportunity for "experimentation, innovation, and a healthy competition for educational excellence."⁹

As did the plaintiffs in the *Rodriguez* case, *supra*, plaintiffs herein argue, that even if local control is a rational basis for disparity in funding, local control could be preserved under

⁸ See, generally, *San Antonio Indep. School Dist. v. Rodriguez*, 411 U. S. 1, 49-50.

In *Dayton Board of Education v. Brinkman* (1977), 433 U. S. 406, the Supreme Court stated:

"[L]ocal autonomy of school districts is a vital national tradition." *Brinkman, supra*, at page 410.

In *Thompson v. Engelking, supra* (96 Idaho 793), at page 803, it was noted that:

"The American people made a wise choice . . . by retaining within the community, close to parental observation, the actual direction and control of the educational program.""

⁹ 411 U. S., at page 50.

other financing schemes that would result in more equality in educational expenditures. As Justice Powell stated in *Rodriguez, supra*, at pages 50 and 51:

"While it is no doubt true that reliance on local property taxation for school revenues provides less freedom of choice with respect to expenditures for some districts than for others, the existence of 'some inequality' in the manner in which the State's rationale is achieved is not alone a sufficient basis for striking down the entire system. *McGowan v. Maryland*, 366 U.S. 420, 425-426 (1961). It may not be condemned simply because it imperfectly effectuates the State's goals. *Dandridge v. Williams*, 397 U.S., at 485. Nor must the financing system fail because, as appellees suggest, other methods of satisfying the State's interest, which occasion 'less drastic' disparities in expenditures, might be conceived. Only where state action impinges on the exercise of fundamental constitutional rights or liberties must it be found to have chosen the least restrictive alternative. Cf. *Dunn v. Blumstein*, 405 U.S., at 343; *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)."

Therefore, although the Ohio system of school financing is built upon the principle of local control, resulting in unequal expenditures between children who live in different school districts, we cannot say that such disparity is a product of a system that is so irrational as to be an unconstitutional violation of the Equal Protection and Benefit Clause. The Equal Yield Formula assures that each school district will receive an equal number of dollars for each mill levied up to 30 mills, regardless of the property wealth of the district. The number of dollars guaranteed per pupil at the 20 mill level has been determined by the Educational Review Committee to be sufficient to assure that all school districts are given the means to comply with the State Board of Education Minimum Standards, which describe a program of "high quality" pursuant to R. C. 3301.07(D).

III.

The plaintiffs, as cross-appellants, seek to reverse the decision of the Court of Appeals sustaining the defendants' third assignment of error before that court, which read:

"The trial court erred by determining that R. C. 3317.022, R. C. 3317.023(A), (B) and (C), R. C. 3317.53(A) and (B), R. C. 3317.02(E) and Section 30 of the amended substitute Senate Bill 221 violate the 'thorough and efficient system' clause of Article VI, Section 2 of the Ohio Constitution."

In sustaining that assignment of error, the Court of Appeals stated:

"The court [of common pleas] * * * overstepped its power in deciding that the finance system for public schools adopted by the General Assembly represents an 'abdication' by the Assembly of its duty under Article VI, Section 2 of the Ohio Constitution. Although exceptions have been judicially recognized, the general rule of noninterference enjoys widespread acceptance; that is, the courts have no power to enforce the mandates of the constitution which are directed at the legislative branch of the government or to control the work of the lawmakers."

Plaintiffs argue that, although Section 2 of Article VI of the Ohio Constitution which provides that "[t]he General Assembly shall make such provisions * * * as * * * will secure a thorough and efficient system of common schools throughout the state" invests the General Assembly with broad discretion in the matter of public education, the constitutional provision does not grant the General Assembly the exclusive authority to determine the criteria against which the exercise of that power is to be measured. They contend further that it does not disqualify the judiciary from adjudicating whether the General Assembly's attempt to formulate a plan for financing elementary and secondary education comports with the constitutional duty which devolves upon it.

The defendants, however, maintain that the issue presented here is a "political question" and, therefore, this court should

refrain from addressing it. To do so, they argue, would require this court to exercise powers constitutionally committed to a coordinate branch of government.

We wish to state clearly at the outset that this court has the authority, and indeed the duty, to review legislation to determine its constitutionality under the Constitution of Ohio and to declare statutes inoperative. The doctrine of judicial review articulated by Chief Justice John Marshall in the landmark case of *Marbury v. Madison* (1803), 5 U. S. (1 Cranch) 137, establishes the judicial branch as the final arbiter in interpreting the Constitution.

The doctrine of judicial review is so well established that it is beyond cavil. Consider this court's opinion in *State v. Masterson* (1962), 173 Ohio St. 402, which states, at page 405, in part:

"It has long been an established principle of law that courts do not interfere in political or legislative matters except in those instances where legislative enactments violate the basic law. In those instances where enactments violate the basic law, it was determined early in our judicial history that the courts have not only the power but the duty to declare such enactments invalid.

"One of the basic functions of the courts under our system of separation of powers is to compel the other branches of government to conform to the basic law."

The defendants, however, while not directly attacking the doctrine of judicial review,¹⁰ attempt to achieve a similar result by contending that the issue is a "political question." To support this contention defendants rely largely upon *Baker v. Carr* (1962), 369 U.S. 186. That portion of *Baker* quoted by the defendants would support their position. However, the language in *Baker* is not particularly persuasive.

¹⁰ Defendants, however, filed a motion to dismiss in the trial court based on the grounds that the court lacked jurisdiction because of the separation of powers doctrine. The trial court overruled the motion, and the Court of Appeals sustained the lower court citing *Marbury v. Madison* (1803), 5 U. S. (1 Cranch) 137.

Baker supplies scant support for defendants' assertion that the actions of the Ohio General Assembly acting under the aegis of the Thorough and Efficient Clause are not judicially reviewable because such review would involve a "political question." *Baker* is not controlling for the following reasons:

(1) The Supreme Court found that there was no political question involved; and, therefore, the material relied upon by the defendants is *dicta*, not the law of the case.

(2) The high court's statements in *Baker* do not represent its most recent pronouncements on the "political question" doctrine. Whatever viability this doctrine had was certainly greatly dampened by the later decision in *Powell v. McCormack* (1969), 395 U. S. 486, in which the court reinstated Adam Clayton Powell to membership in the House of Representatives, delineated the power of the House to review its own membership, and put to shambles any attempts by legal scholars to reconcile the court's pronouncements in this area.

We find that the issue concerning legislation passed by the General Assembly pursuant to Section 2 of Article VI of the Ohio Constitution presents a justiciable controversy. In so finding, we find the decisions of the courts in New York, New Jersey and Washington helpful. In *Robinson v. Cahill* (1975), 69 N. J. 133, 351 A. 2d 713; *Board of Education, Levittown Union Free School District v. Nyquist* (1978), 94 Misc. 2d 466, 408 N. Y. Supp. 606; and *Seattle School District No. 1 v. State* (1978), 90 Wash. 2d 476, 585 P. 2d 71, the courts had no difficulties concerning their authority to review the constitutionality of similar legislation.¹¹

¹¹ As stated by the Supreme Court of Washington in the *Seattle* case (585 P. 2d 71), at page 83:

"The ultimate power to interpret, construe and enforce the constitution of this State belongs to the judiciary. * * * Both history and uncontradicted authority make clear that "[I]t is emphatically the province and duty of the judicial department to say what the law is." *United States v. Nixon* * * * [418 U. S. 683, 703 (1974)], quoting *Marbury v. Madison*, 5 U. S. (1 Cranch), 137, 176 * * * (1803), even when that interpretation serves as a check on the activities of another

However, we agree with that portion of the Court of Appeals' opinion, which states: "Because this constitutional grant reenforces the ordinary discretion reposed in the General Assembly in its enactment of legislation, the judicial department of this state should exercise great circumspection before declaring public school legislation unconstitutional as a violation of Article VI, Section 2."

In recognition of the deference to be provided to the General Assembly in education matters, this court stated in *State, ex rel. Methodist Children's Home Assn., v. Board of Education* (1922), 105 Ohio St. 438, 448:¹²

"• • • Pursuant to the authority so vested the legislative branch of the state has enacted the laws to which we have referred, and many others, with a view to making most adequate and satisfactory provision for the efficient education of the youth of the state. *With the wisdom or the policy of such legislation the court has no responsibility and no authority.* Its duty is limited to the interpretation of such provisions as are not clear, and the carrying into execution of laws enacted which are not in conflict with constitutional provisions." (Emphasis added.)

To state that the General Assembly must be granted wide discretion and that it is not the function of this court to question the wisdom of the statutes, is not to say that the General Assembly's discretion in this area is absolute. In

branch or is contrary to the view of the constitution taken by another branch.'" *Seattle School District No. 1 v. Washington*, *supra*, at page 22.

¹² Accord, *Cronin v. Lindberg* (1977), 66 Ill. 2d 47, 360 N. E. 2d 360, in which the Supreme Court of Illinois was confronted with the issue of whether certain statutory sections dealing with the financing of public education were compatible with the Illinois Constitution. The court, at page 58, stated:

"• • • It is not the function of this court to question the wisdom of legislation which does not contravene constitutional safeguards. • • •

"• • • This court has consistently held that the question of the efficiency of the educational system is properly left to the wisdom of the legislature."

Miller v. Korns (1923), 107 Ohio St. 287, the court was confronted with a constitutional challenge to a statute authorizing funds raised by property taxation within one school district to be used to finance schools in other districts within the county. The court passed upon the constitutionality of the legislation, which was clearly related to the powers and duties of the General Assembly under Section 2, Article VI of the Ohio Constitution and upheld the statute as constitutional.

In *Miller v. Korns, supra*, at pages 297-298, the court made a statement concerning the "Thorough and Efficient Clause" which is highly pertinent to the case at bar:

"Section 2, Article VI of the Ohio Constitution, provides as follows:

"The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, *will secure a thorough and efficient system of common schools throughout the state.* • • •"

"This declaration is made by the people of the state. It calls for the upbuilding of a system of schools throughout the state, and the attainment of efficiency and thoroughness in that system is thus expressly made a purpose, not local, not municipal, but state-wide.

"With this very state purpose in view, regarding the problem as a state-wide problem, the sovereign people made it mandatory upon the General Assembly to secure not merely a system of common schools, but a system thorough and efficient throughout the state.

"A thorough system could not mean one in which part or any number of the school districts of the state were starved for funds. An efficient system could not mean one in which part of any number of the school districts of the state lacked teachers, buildings, or equipment.

"In the attainment of the purpose of establishing an efficient and thorough system of schools throughout the state it was easily conceivable that the greatest expense might arise in the poorest districts; that portions of great cities, teeming with

life, would be able to contribute relatively little in taxes for the support of schools, which are the main hope for enlightening these districts, while districts underpopulated with children might represent such taxation value that their school needs would be relatively over supplied."¹³

This court, therefore, intimated in *Miller v. Korns, supra*, that the wide discretion granted to the General Assembly is not without limits. For example, in a situation in which a school district was receiving so little local and state revenue that the students were effectively being deprived of educational opportunity,¹⁴ such a system would clearly not be thorough and efficient.

We find, however, that the General Assembly has not so abused its broad discretion in enacting the present system of financing public education as to render the statutes in question unconstitutional. To the extent that the Equal Yield Formula's guarantee at 20 mills is sufficient to ensure that each child receives an adequate education, the system devised by the General Assembly is constitutional within Section 2, Article VI of the Ohio Constitution. The "Equal Yield Formula" attempts to establish a funding floor, at 20 mills, that is

¹³ Paragraphs one and two of the syllabus in *Miller, supra*, provide:

"1. Sections 7575 and 7600, General Code (109 O. L., 148 and 149), providing for a tax levy of 2 65/100 mills, the proceeds of which are to be retained in the several counties of the state for support of the schools thereof, and for the apportionment thereof, are valid and constitutional, not repugnant to the federal and state Constitutions, nor to any limitation contained in either.

"2. Under Section 2, Article VI of the Ohio Constitution, making it mandatory upon the General Assembly to make such provisions by taxation or otherwise as will secure a thorough and efficient system of common schools throughout the state, appropriation by the Legislature of funds raised in one school district to the needs of other school districts is made in pursuance of a legitimate state and public purpose, and not in pursuance of a local or private purpose."

¹⁴ See *San Antonio Indep. School Dist. v. Rodriguez, supra*, at page 25, where the United States Supreme Court stated that absent "absolute deprivation of education" the taxation system of financing public education was not unconstitutional.

sufficient to assure that each school district has the means to comply with state minimum standards. Although plaintiffs attempt to equate school closings with "educational deprivation," the uncontested fact is that school districts' calendar adjustments (school closings) have never resulted in any student receiving less than the full 182 days of instruction per year as required by R. C. 3313.48. Also, the record reveals that several urban school districts that claim to be "starved for funds" in fact offer programs and services in excess of state minimum standards.

The fact that a better financing system could be devised which would be more efficient or more thorough is not material.

IV.

STANDING

The defendants argue that the Cincinnati Board of Education, its members and administrative officials, lack standing to litigate this cause. This issue does not merit extended analysis. Defendants have not challenged the standing of the students who attend schools in the Cincinnati School District and similarly situated school districts in Ohio. Therefore, even if these statutory plaintiffs were found to lack standing, it is reasonable to assume that the constitutional questions raised in this action would nevertheless be pursued by the students and parents without the participation of the other plaintiffs. As the Court of Appeals stated of this issue: "The assignment seems [to be] 'much ado about nothing.'" Even the defendants in their brief admit that "[they] do not advance this assigned error as dispositive of the issue of this case." Also they concede that "the issue of standing is secondary to the paramount issue [in the case]."

The judgment of the Court of Appeals that the Ohio statutory system for financing elementary and secondary education violates Section 2, Article I of the Ohio Constitution is reversed. The judgment of the Court of Appeals that the Ohio statutory system for financing elementary and secondary edu-

cation does not violate Section 2, Article VI of the Ohio Constitution is affirmed.

For the reasons stated herein, the judgment of the Court of Appeals is reversed in part and affirmed in part.

Judgment reversed in part and affirmed in part.

CELEBREZZE, C. J., HERBERT, P. BROWN, SWEENEY and HOLMES, JJ., concur.

LOCHER, J., dissenting. I dissent from the judgment of the majority, holding that Ohio's statutory system for the financing of elementary and secondary education does not violate the Ohio Constitution. In my view, the present system violates both the Equal Protection and Benefit Clause of Section 2 of Article I, and the "Thorough and Efficient Clause," Section 2, Article VI of the Ohio Constitution.

I.

First, I respectfully disagree with the majority's conclusion to the effect that educational oportunity is not a fundamental right and, therefore, not entitled to strict judicial scrutiny under Equal Protection analyses. The Supreme Court stated, in *San Antonio School Dist. v. Rodriguez* (1973), 411 U.S. 1, 33, that:

"• • • [T]he key to discovering whether education is 'fundamental' is not to be found in comparisons of the relative societal significance of education • • •. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution. • • •"

The right to an education is implicitly mandated by Sections 2 and 3 of Article VI of the Ohio Constitution, as follows:

"The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, *will secure a thorough and efficient system of common schools throughout the state*; but no religious or other sect, or sects, shall ever have any exclusive right to, or

control of, any part of the school funds of this state." (Emphasis added.) Section 2, Article VI.

"Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds; provided, that each school district embraced • • • within any city shall have the power • • • to determine • • • the number of members and the organization of the district board of education • • •." Section 3, Article VI.

Applying the "*Rodriguez test*," it follows that, in Ohio, educational opportunity is a fundamental interest entitled to strict scrutiny under Ohio's Equal Protection Clause. California, Connecticut, and Wisconsin have found educational opportunity to be a fundamental interest under the "*Rodriguez test*." *Serrano v. Priest* (1976), 18 Cal. 3d 728, 557 P. 2d 929; *Horton v. Meskill* (1977), 172 Conn. 615, 376 A. 2d 359; *Buse v. Smith* (1976), 74 Wis. 2d 550, 247 N. W. 2d 141.¹⁵

Over and above the *Rodriguez test*, I would find educational opportunity to be a fundamental right because of its nexus to the right to participate in the electoral process and to the rights of free speech and association guaranteed by the First Amendment.

Finally, the provision of public education is the single most important function of our state. Education is at the very foundation of our democracy and "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an [adequate] education." *Brown v. Board*

¹⁵ In *Robinson v. Cahill* (1973), 62 N. J. 473, 303 A. 2d 273, the New Jersey Supreme Court, although not applying the "*Rodriguez test*," went on to find their system of financing education in New Jersey unconstitutional because it violated the "Thorough and Efficient Clause," a provision identical to Ohio's "Thorough and Efficient Clause." On rehearing to determine a remedy, however, the court stated that the right of children to a thorough and efficient *education is a fundamental right* guaranteed by the state constitution and, therefore, must be administered equally. *Robinson v. Cahill* (1975), 69 N. J. 133, 351 A. 2d 713.

of Education (1954), 347 U.S. 483, 493. In this sense, the fundamental right to equal educational opportunity is the American Dream as incarnate as constitutional law.

The American Dream is thwarted by the archaic and unconstitutional statutory system of financing elementary and secondary education. Evidence abounds that Ohio's beleaguered schools are overwhelmed by problems of such magnitude that the basic needs of pupils go unfulfilled. The majority opinion flies square in the face of reality, not to mention the findings of fact and legal conclusions of the trial court and the Court of Appeals.

In determining whether unequal educational opportunity exists among Ohio's school age children, this court is constrained by the nearly 400 page findings of fact of the trial court. These findings were adopted in their entirety by the Court of Appeals. This court has stated on many occasions that the court will not weigh the evidence to determine whether correct conclusions as to facts were reached by the court below. *State ex rel. Pomeroy v. Webber*, (1965), 2 Ohio St. 2d 84, 86, citing *State, ex rel. Kobelt, v. Baker* (1940), 137 Ohio St. 337, 340; accord, *G. S. T. v. Avon Lake* (1976), 48 Ohio St. 2d 63, 65, at fn. 2; *In re Estate of Duiguid* (1970), 24 Ohio St. 2d 137, 141. The only exception to this rule is where there is no evidence in the record of probative value to support them. *Gillen-Crow Pharmacies, Inc., v. Mandzak* (1966), 5 Ohio St. 2d 201, 205; *Gates v. Board of Edn. of River Local School Dist.* (1967), 11 Ohio St. 2d 83. At no time has the appellant alleged that any of the approximately 400 page findings of the trial court are unsupported by the 7,500 page record.

There is a clear connection between the meager financial resources and the general malaise of many schools, particularly those located in urban areas of the state.¹⁶

¹⁶ "(G) Conditions in Urban Districts

"(1) The same conditions of educational deprivation existing in the audit districts, which, with the exception of Toledo, are essentially rural,

Problems associated with discipline; inadequate salaries; lack of textbooks; cramped facilities and outmoded equipment;¹⁷ vandalism; low teacher morale; ebbing parental concern; demoralized non-teacher employees; payless pay days; absenteeism and truancy; consistent failures of school tax levies and bond issues;¹⁸ record teacher resignations; desultory pupil achievement and many others are directly traceable to Ohio's inequitable system of funding. The voluminous trial record is replete with evidence substantiating the ills that threaten to engulf the schools and the linkage between those symptoms and the emaciated proceeds of Ohio's funding statutes.¹⁹

also exist in the principal urban, inner-city districts. • • •" Findings of Fact and Conclusions of Law, at page 93.

¹⁷ "(E) Educational Conditions in Closing Audit Districts
• • •

"(4) The physical plants in a school district are substantially educationally significant. Obsolete, poorly lighted, inadequately maintained school buildings impair teaching and learning efficiency and have a negative effect upon student morale and motivation." Findings of Fact and Conclusions of Law, at page 72.

¹⁸ "(3) The evidence that the local property tax component of the system has utterly failed is overwhelming. Superintendent after superintendent of school districts which have been driven to closing or to the brink of closing schools for lack of funds testified to histories of consistent failures of school tax levies and school bond issues." Findings of Fact and Conclusions of Law, at page 186.

¹⁹ "(9) Many of the districts have been forced to borrow from commercial banks and from bond retirement accounts, and have had to defer the payment of bills until the next school year.

"(10) The superintendents anticipate that the financial problems of their districts will become even worse in 1977 than they were in 1976, that the deficits will become larger and that their schools will have to be closed for longer periods in 1977 than they were in 1976.

"(11) School closings place districts in deeper financial holes because they incur additional costs for unemployment compensation, interest and make-up days.

"(12) The additional cost to the Toledo City District in unemployment compensation alone as a result of the 1976 closing was \$1.5 million." Findings of Fact and Conclusions of Law, page 62.

The defendants, acknowledging that wide disparity in educational funding exists among Ohio's 617 school districts, argue that, even if this court finds educational opportunity to be a fundamental right, "local control" is a compelling state interest justifying the grossly unequal treatment of Ohio's school age children. Although local control may be a rational basis justifying the present system, it is clearly not compelling. Whatever may be said about "local control," the evidence shows that the present system has actually eroded such control; *i. e.*, poorly funded districts are not even able to offer adequate programs required by the state's own "minimum standards," let alone design programs to meet the individualized needs of the children within their district. Many experts testified that increased state funding would enhance local control.

Repeated allusions by the majority to the foresight of the legislators who framed our laws establishing local control of the public education process is scant solace to the pupil, teacher or administrator in the embattled schools. Indeed, many who feel that local control of the operations is necessary to accomplish a viable school system fear that the growing difficulties attacking the schools may bring about the demise of our educational system as we know it. Surely, desperate pleas for financial transfusion will go out to the federal bureaucratic establishment. When, and if, the calls for help are heeded, the strings that accompany the federal largesse will erode the cherished ideal of district control. Better the General Assembly shore up the disadvantaged school and, in the process, save the expressed community interests of our people.²⁰

More importantly, Section 2, Article VI, places the primary responsibility for the education of our school age children *upon* the state of Ohio, *not* the local school district. Local control,

²⁰ "(3) The failure of the General Assembly to make provisions for the plants and facilities of the school districts represents an omission to provide for one of the essential elements of the public educational system." Findings of Fact and Conclusions of Law, at page 204.

therefore, cannot be utilized to justify the present system which creates: (1) vast disparities among Ohio's school districts in (a) total state and local support per pupil and (b) expenditures per pupil for instruction, and (2) the quantity and quality of educational services provided. The fact that many districts were forced to close their schools, for varying periods of time, in 1976, 1977 and 1978, and that many districts which avoided closing in 1978 were unable to deliver better than austerity levels of education, is a deplorable situation which cries out for a remedy. A loss of a day of instruction can never be recaptured.

II.

Second, while the General Assembly must be afforded broad discretion in establishing a "thorough and efficient system of common schools," in my view, it abuses that discretion where many school districts are so "starved for funds" that they are unable to comply with the state's own 'minimum standards,' and are unable to remain open for the entire school year without interruption.²¹ The trial court specifically held that "[t]he significance of the evidence of non-compliance by schools with state minimum standards is that the General Assembly has established a system of common schools throughout the state in which the overwhelming majority of schools are substandard as measured by the state's own criteria." Findings of Fact and Conclusions of Law, at page 56.

Therefore, to the extent that some children are forced to attend schools which are so poorly funded that they cannot meet state "minimum standards," they are being deprived of educational opportunity. Such a system is not "thorough and efficient."

²¹ In 1976, 17 of Ohio's school districts were forced to apply to the State Auditor for closing audits, pursuant to R. C. 3313.483. Seven "audit" districts actually closed.

In 1977, 51 school districts were forced to apply for closing audits under R.C. 3313.483, and the results of the audits showed that 33 of the districts would have had deficits if they completed the school year.

THE SUPREME COURT OF THE STATE OF OHIO
No. 78-1284

THE STATE OF OHIO,) *To wit:*
) 1979 TERM
City of Columbus.) June 13, 1979

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF CINCINNATI et al.,
Appellees and Cross-Appellants,

vs.

FRANKLIN B. WALTER et al.,
Appellants and Cross-Appellees.

MANDATE

To the Honorable Common Pleas Court, Within and for the
County of Hamilton, Ohio, Greeting:

The Supreme Court of Ohio commands you to proceed
without delay to carry the following judgment in this cause
into execution:

Judgment of the Court of Appeals reversed in part and
affirmed in part for the reasons set forth in the opinion ren-
dered herein.

THOMAS STARTZMAN,
Clerk

----- 19 -----
----- Deputy

Docket Fee \$25.00 Paid by Attorney General
Docket Fee \$25.00 Paid by John A. Lloyd, Jr.
• • •

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

No. C-780001

BOARD OF EDUCATION OF THE
CITY SCHOOL DISTRICT OF THE
CITY OF CINCINNATI, et al.,
Plaintiffs-Appellees,
v.

FRANKLIN B. WALTER,
Superintendent of Public Instruction, et al.,
Defendants-Appellants.

OPINION

(Filed September 5, 1978)

**Appeal From The Court of Common Pleas
Hamilton County, Ohio**

Mr. John A. Lloyd, Jr. and Ms. Nancy A. Lawson, 610 Mer-
cantile Library Building, 414 Walnut Street, Cincinnati, Ohio
45202, for Plaintiffs-Appellees,

Messrs. William J. Brown, Attorney General, David H. Beaver,
Henry A. Arnett and Ms. Nina Rose Hatfield, Assistant At-
torneys General, 15th Floor, 30 East Broad Street, Columbus,
Ohio 43215, for Defendants-Appellants.

KEEFE, P. J.

This cause came on as the appeal of a suit for declaratory
and other relief to hold the Ohio system of financing public
elementary and secondary education unconstitutional under
the Ohio Constitution. The trial court decided that this is a

proper class action and the following constituted the ultimate list of parties plaintiff:

- A) The Board of Education of the City School District of the City of Cincinnati;
- B) Members of that Board;
- C) The Superintendent of Schools, City School District of the City of Cincinnati;
- D) The Clerk-Treasurer of the City School District of the City of Cincinnati;
- E) The named students who reside in the City School District of the City of Cincinnati and who attend the Cincinnati public schools;
- F) The named parents of children attending such schools who also are owners of real property located in the Cincinnati School District;
- G) All of the above on behalf of themselves or in their representative capacities, and as representative parties on behalf of all similarly situated school districts in Ohio, the members of the boards of education for such school districts, all administrators employed by such school districts, the students who reside therein and attend public elementary and secondary schools operated by such school districts, the parents of such students, and the owners of real property situated in such school districts.

The parties defendant are the Superintendent of Public Instruction, State of Ohio, with whom rests the responsibility of calculating the amounts of state aid payable to each school district under Chapter 3317 of the Revised Code; the State Board of Education; the Department of Education; and the Controlling Board which administers the School Foundation Program, a program authorized by Chapter 3317 of the Revised Code.

The trial court's Declaratory Judgment Order follows:

The Court finds that there is no just reason for delay in acting upon the plaintiffs' claim for declaratory relief and that, indeed, the interests of the plaintiffs and the general public require that such a final order be now made. In making this order, however, the Court recognizes that there are additional claims presented by the Complaint, including a claim for attorneys' fees, over which the Court is expressly reserving jurisdiction at this time and which will be decided, when appropriate, as the rights of the parties and the interests of justice require.

In consideration of the entire record in the case and the applicable law, and in consideration of the FINDINGS OF FACT AND CONCLUSIONS OF LAW filed contemporaneously herewith, the Court hereby makes the following ORDER:

In accordance with O.R.C. § 2721.02, the Court declares, adjudges and decrees:

- (a) that the statutory system which the General Assembly has established for financing public elementary and secondary education is depriving the members of the plaintiff class of school children of the rights conferred upon them by Article VI, § 2 of the Ohio Constitution to attend school in a thorough and efficient system of common schools throughout the state and by Article I, § 2 of the Ohio Constitution to equal protection of the laws;
- (b) that this system is interfering with and impairing the discharge of oaths taken by members of the plaintiff classes of school board members under Article XV, § 7 of the Ohio Constitution and O.R.C. § 3313.10 to support the constitution of this state and to perform faithfully their duties, and the discharge by such school board members of the duties imposed upon them by O.R.C. § 3313.47 to manage and control all public schools and by O.R.C. § 3313.48 to provide for the free education of the youth of school age within each district, and

that it is interfering with the discharge by the members of the plaintiff class of school district administrators of their duties provided by law;

(c) that the statutory system which the General Assembly has established for the financing of public elementary and secondary education represents the abdication by the General Assembly of the duty which devolves upon it under Article VI, § 2 of the Ohio Constitution to "make such provision . . . as will secure a thorough and efficient system of common schools throughout the state;

(d) that O.R.C. §§ 3317.022, 3317.023(A), (B) and (C), 3317.53(A) and (B), 3317.02(E), and Section 30 of Am. Sub. SB 221 violate Article VI, § 2 of the Ohio Constitution and are therefore void and no longer operative;

(e) that the statutory system which the General Assembly has established for the financing of public elementary and secondary education establishes invidious classifications among school children which are neither supported by any compelling state interest nor predicated upon any rational basis, and that the system thus violates the equal protection and benefit clause of Article I, § 2 of the Ohio Constitution;

(f) that O.R.C. §§ 3317.022, 3317.023(A), (B) and (C), 3317.53(A) and (B), 3317.02(E), and Section 30 of Am. Sub. SB 221 violate Article I, § 2 of the Ohio Constitution and are therefore void and no longer operative.

The Court hereby declares that O.R.C. §§ 3317.022, 3317.023(A), (B) and (C), 3317.53(A) and (B), 3317.02(E), and Section 30 of Am. Sub. SB 221 are unconstitutional and hence void and hereafter inoperative.¹

¹ All of these sections are part of the public statutory law of this state and as such readily judicially noted. (Our footnote.)

The Court realizes, however, that the funds which are paid to school districts in basic aid under O.R.C. § 3317.022 are essential to the continued operation of most of the school districts in the state. The Court also realizes that the enactment of a valid statutory system for financing public elementary and secondary education may reasonably consume six months' time and that the ends of justice would not be served by an order which would further cripple the public schools during the balance of the 1977-78 school year.

In light of these considerations, the Court hereby suspends the effect of this order until July 1, 1978.

Defendant's Exceptions Preserved.

The Clerk is directed to enter this document as the Judgment Entry of this Court on the plaintiffs' claim for declaratory relief.

Appellants advance five assignments of error, the first of which alleges that:

The trial court erred in overruling defendant's motion to dismiss and in exercising jurisdiction in this case in violation of the separation of powers doctrine.

In amplification of their assignment one, appellants contend that the judgment *supra* determined issues "constitutionally committed to a coordinate branch of government."

In effect the appellants claimed in their motion to dismiss, which they urged upon the court at least twice during trial proceedings, that the legislature's power in the field of public school financing — under the Ohio Constitution — is plenary and exclusive and free from any judicial review whatsoever. We cannot assent to that postulation. As far removed in time as Chief Justice Marshall's pronouncement in *Marbury v. Madison*, (1803), 5 U.S. (1 Cranch) 137, it has been decided that courts have not only the right, but the obligation to interpret the Constitution (be it federal or state) and declare

unconstitutional statutes inoperative. As stated by Chief Justice Marshall:

The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the Constitution, is void. (5 U.S. at 176).

Because the judicial review doctrine is so firmly established in the law, we refrain from listing numerous authorities which support the principle. Nevertheless, we note one Ohio Supreme Court opinion — *State v. Masterson* (1962), 173 Ohio St. 402, 183 N.E.2d 376 — in which the author states:

Respondents contend, however, that in the present instance the failure to act . . . is one in which the judiciary cannot interfere.

It has long been an established principle of law that courts do not interfere in political or legislative matters except in those instances where legislative enactments violate the basic law. In those instances where enactments violate the basic law, it was determined early in our judicial history that the courts have not only the power but the duty to declare such enactments invalid.

One of the basic functions of the courts under our system of separation of powers is to compel the other

branches of government to conform to the basic law. (183 N.E.2d at 379.)

The complaint includes allegations — on their face, arguably meritorious — challenging the constitutionality (under the Ohio Constitution) of certain statutes. The complaint presents a justiciable cause, and the court below decided correctly in overruling appellants' motion to dismiss. Resultantly, the initial assignment of error is devoid of merit.

The second assignment follows:

The trial court erred by determining that named plaintiffs — an entity created by state statute and holders of public offices created by state statute — have standing to maintain this lawsuit which involves constitutional challenges against state statutes.

Our best evaluation of the full thrust of this assignment, aided by appellants' conception of what issues the assignment raises, is a three-pronged contention. First, the parties plaintiff (excepting the students, and their parents as such, and as property owners) are creatures of statute and cannot raise constitutional challenges against other statutes enacted by their creator, the Ohio General Assembly — somewhat similar to the unacceptable notion of biting the hand that feeds you; second, these parties plaintiff cannot assert the legal and constitutional rights of others; and third, "they have suffered no injury in fact and are not the designated beneficiaries of the constitutional guarantees in question."

So far as the legal capacity of the statutory creatures to challenge the constitutionality of state statutes passed by the creator-legislature is concerned, there seem to be many cases on the subject, and peripheral thereto, decided by state and federal courts, with disparate results.² Appellees argue that

² It is noted that the statutory creatures here do not challenge the statutory authority for their own existence. Such would be a factually distinguishable pattern from that now before us for review.

all of appellants' authorities in support of the instant assignment emanate from other states or the federal courts — and we are reminded by appellees and *amici curiae* that the principles applied by the federal courts to govern standing are more restrictive than those employed by state courts. We are advised that state courts have never developed a law of standing that is "so complicated or artificial"³ as that developed in the federal courts. While no Supreme Court of Ohio decision precisely in point has been brought to our attention, nevertheless one recent pronouncement points to the conclusion which we believe is indicated with respect to the initial issue of the assignment. The case is: *Canton v. Whitman* (1975), 44 Ohio St. 2d 62; 337 N.E.2d 766. On July 1, 1974, the Ohio Director of Environmental Protection issued an order directing the City of Canton to begin fluoridating its water which the city did not wish to do. The city sought administrative and judicial relief from the operation of a certain state statute requiring fluoridation, and the Supreme Court ultimately ruled against Canton. However, the Supreme Court did consider and decide Canton's claim that the statute mandating fluoridation was an invalid exercise of *state* police power. The role of Canton seems comparable to the capacities of the so-called "statutory plaintiffs" *sub judice*. The Supreme Court did not shrink from considering a matter in which a creature of statute — the City of Canton — challenged a certain fluoridation statute enacted by the General Assembly.

Albeit not an Ohio decision, there is another pronouncement — more in point than *Canton* — the reasoning and result of which we find apt, sound and persuasive. In *Cronin v. Lindberg* (1977), 66 Ill. 2d 47, 360 N.E.2d 360, the Supreme Court of Illinois explicitly held that a school board may assert a denial of equal protection of the laws. Mr. Justice Underwood wrote:

A school board may, however, assert a denial of equal

protection of the laws if it is a member of a class being discriminated against [citations omitted], and the allegation that the effect of the reduction in State aid here was to discriminate "against relatively poorer school districts such as Chicago" merits consideration.

Two other recent cases in which boards of education are accorded standing as plaintiffs are *Seattle School District No. 1 of King County v. State of Washington*, Case No. 53950 (Super. Ct. of Thurston County, Jan. 14, 1977), and *Board of Education, Levittown Union Free School Dist., Nassau County v. Nyquist*, Case No. 8208/74 (Supreme Court of New York, Nassau County, June 23, 1978).

The quoted language of the Illinois Supreme Court, *supra*, offers little or no support for including as parties the Cincinnati Superintendent of Schools or the Clerk-Treasurer of the District. However, we believe that since the thrust of appellants' challenge primarily attacks the Board's standing, the fate of these two officers — as directly tied as they are to the Board — should rise or fall with the decision as to the Board's standing.

We proceed to evaluate the next issue raised in the assignment, that is, whether the Cincinnati Board of Education, its members and administrative officers, can assert the legal and constitutional rights of others — presumably the "others" meaning students. First of all, the Board and its members and administrative officers have rights of their own they are entitled to pursue. If the members of the Cincinnati Board of Education take seriously their oath of office "to perform faithfully [their] duties" — as presumably they do — and the administrative officers are similarly conscientious, the duties of these officers must reasonably be held to include attention to a lawful and effective system of financing the school operation of which they all form such an integral part. Appellants, moreover, seem to overlook the fact that the pupils *themselves* are party plaintiffs and thus in a position to lay claim to their own rights without relying on the Board, its members and the

³ K. Davis, *Administrative Law* 422 (3 ed. 1972).

administrative officers to do so for them. However, in addition, we believe that because of the general public interest involved, the Board, its members and the administrative officers may also raise the rights of the students who attend the state's public schools. A text writer's view on this subject is expressed thus in 10 O. Jur. 2d Constitutional Law § 139:

[T]he courts of Ohio have recognized that a question of general public interest may be raised by a public officer even though there is some doubt that he has any [personal] right in the matter.⁴

Finally, do the Cincinnati Board of Education, its members and administrative officers lack standing because "they have suffered no injury in fact and are not the designated beneficiaries of the constitutional guarantees in question"?

The statutory plaintiffs are responsible for providing educational opportunities for the youth of the district. The Cincinnati School District, as well as the other districts in the same class, is the designated beneficiary of the statutes which provide for the financing of public education. These plaintiffs would necessarily be affected in an adverse way in performing their statutory duties by a decision in this case upholding Ohio's system of financing public education. The Board, and these officers, appear to us to have a clear stake in the outcome of the controversy. If this case had been commenced *without* the Board of Education and its members, it is difficult to imagine that they would not have been joined as parties necessary for a just adjudication under Civ. R. 19 (A)(2). Moreover, the appellants have been unable to convince us that these statutory plaintiffs are so callous and indifferent to the performance of their official duties that they might be said to have no true stake in the state of school

⁴ The case cited in the O. Jur. footnote is *State ex rel. Bruestle v. Rich* (1953), 159 Ohio St. 13, 110 N.E.2d 778, which was a mandamus proceeding brought by the city solicitor of Cincinnati to require other city officials to take action with a slum rehabilitation program.

financing, no matter what difficulties exist. Furthermore, we emphasize that public officers in Ohio have been held to have standing to raise issues of general public interest even though their personal concern is minimal or difficult to delineate or quantify. See *State ex rel. Bruestle v. Rich, supra*, n. 4.

Therefore, we overrule the second assignment of error, and having done so, cannot refrain from questioning the significance of the assignment. Even were these statutory plaintiffs found to lack standing, it is only reasonable to assume that the constitutional questions raised in this action would nevertheless be pursued by the students, parents, and property owners without the participation of the other plaintiffs. The assignment seems "much ado about nothing."

There follows the verbatim third assignment of error:

The trial court erred by determining that R.C. 3317-022, R. C. 3317.023(A), (B) and (C), R. C. 3317.53(A) and (B), R. C. 3317.02 (E) and Section 30 of the amended substitute Senate Bill 221 violate the "thorough and efficient system" clause of Article VI, Section 2 of the Ohio Constitution. [Adopted Conclusions, T.d. 227 at pp. 353-372 and Judgment Entry, T.d. 230 at ¶¶ c and d.]⁵

In support of the third assignment appellants assert the following in their brief:

This Court of Appeals must recognize that in order to uphold the trial court's decision that the present system, and specific portions of it, violate Article VI, Section 2 of the Ohio Constitution . . . this Court must hold that

⁵ The pertinent part of Article VI (Constitution of Ohio) is as follows:
§ 2 School funds.

The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

the lower court had the authority and the ability to usurp the plenary power of the General Assembly in education. This Court must hold that the trial court acted within proper judicial bounds in substituting its judgment for that of the legislative and executive branches of government as to what constitutes high quality education in this State and as to what is the most appropriate method to secure such an education. This Court must further hold that the trial judge could disregard the law and the evidence establishing the constitutionality of the system and could, instead, declare the system invalid on such grounds as that the system does not provide an unlimited source of monies to fund pet projects not essential to maintenance of complete, high quality education.

Moreover, appellants assign as error the trial court's declaration in the judgment entry that the system which the General Assembly has established for the financing of public elementary and secondary education "represents *the abdication by the General Assembly* of the duty which devolves upon it under Article VI, § 2 of the Ohio Constitution. . ." (Emphasis supplied.)

We find ourselves favorably impressed by the thrust of the third assignment, challenging as it does, interference by the judicial department with the legislative, and conclude that the assignment is well taken. The court below erred and overstepped its power in deciding that the finance system for public schools adopted by the General Assembly represents an "abdication" by the Assembly of its duty under Article VI, § 2 of the Ohio Constitution. Although exceptions have been judicially recognized, the general rule of noninterference enjoys widespread acceptance; that is, the courts have no power to enforce the mandates of the constitution which are directed at the legislative branch of the government or to control the work of the lawmakers. As written in 16 Am. Jur. 2d Constitutional Law § 226, "[t]he courts have no general supervision over legislation and are without power to review the exercise of legislative discretion." Although the courts

have inherent authority to determine whether statutes transcend the limits imposed by federal and state constitutions and to determine whether such laws are or are not constitutional, the trial court here attempted to discount the wide range of discretion permitted the General Assembly. That courts have no power to substitute their judgment for that of the legislature is axiomatic. Moreover, not only is the General Assembly entitled to wide discretion in the passage of all legislation, including of course statutes which provide for the financing of public schools, but as a result of the clear and doctrinaire language of Article VI, § 2 that the General Assembly shall provide for a "thorough and efficient system" of public schools, the sovereign people of the State of Ohio have unequivocally indicated — through their constitution — the department of government (the legislative) which is to have the responsibility for the state's public school system. Because this constitutional grant reinforces the ordinary discretion reposed in the General Assembly in its enactment of legislation, the judicial department of this state should exercise great circumspection before declaring public school legislation unconstitutional as a violation of Article VI, § 2. We do not have here a situation in which the General Assembly has failed to act; it is obvious from the number of statutes involved in the instant appeal, and otherwise, that the legislature has acted and passed laws which presumably in its discretion provide a "thorough and efficient system" of schools.⁶ That the judiciary of this state may believe that a different plan, another system, may be more thorough or more efficient is not a sufficient basis in law for wresting from the General Assembly a power with which the state's constitution endows it. Presumably the Assembly believes that it has enacted school financing laws consistent with Ohio's constitution. In

⁶ For an overview of the legislature's attention to the problem, see the forty-three page Report of the Education Review Committee of the 110th General Assembly of Ohio, dated Dec. 15, 1974, and included in the record herein as "Defendant Exhibit II-A-4."

effect, the court below disagreed with what is a "thorough and efficient system." The insurmountable obstacle confronting the trial court, however, is the terminology of Article VI, § 2 which in simple and straightforward language designates the General Assembly as the branch of government with the power to determine a system which is "thorough and efficient."

The Supreme Court has recognized the plenary power of the General Assembly under Article VI, § 2. In *State ex rel. Methodist Children's Home Association of Worthington v. Board of Education* (1922), 105 Ohio St. 438, 138 N.E. 865, the Supreme Court stated:

Pursuant to the authority so vested the legislative branch of the state has enacted the laws to which we have referred, and many others, with a view to making most adequate and satisfactory provision for the efficient education of the youth of the state. *With the wisdom or the policy of such legislation the court has no responsibility and no authority.* Its duty is limited to the interpretation of such provisions as are not clear, and the carrying into execution of laws enacted which are not in conflict with constitutional provisions. It cannot be contended that any provision of the constitution is violated by the statutes here in question, and we find not only that such statutes do not enjoin upon the defendants a duty which the relator seeks to enforce, but, on the contrary, clearly warrant the attitude and action of the board of education.

It is neither the province nor the right of courts to annul the plain provisions of the statute because of the belief that the observance or enforcement thereof will work an inconvenience. The remedy is with the legislature. . . [S]uch unwarranted usurpation of the legislative power merits the condemnation usually accorded it after full and candid consideration and upon deliberate and mature judgment. (105 Ohio St. at 448, 449. Emphasis ours.)

In *The County Board of Education of Hancock County, et al. v. Moorehead, et al.* (1922), 105 Ohio St. 237, 136 N.E. 913, the Supreme Court asserted:

The power of the legislature, therefore, with reference to public schools is plenary. 105 Ohio St. at 244.

We have previously cited *Cronin v. Lindberg* (1977), 66 Ill. 2d 47, 360 N.E.2d 360, in which the Supreme Court of Illinois was confronted with the issue of whether certain statutory sections providing for financial aid to schools were compatible with the Illinois Constitution. The author of the opinion wrote:

It is not the function of this court to question the wisdom of legislation which does not contravene constitutional safeguards. (360 N.E.2d at 365.)

• • •

This court has consistently held that the question of the efficiency of the educational system is properly left to the wisdom of the legislature. (360 N.E.2d at 365.)

In holding the indicated school financing statutes invalid, under Article VI, § 2, the trial court placed great reliance upon *Miller v. Korns* (1923), 107 Ohio St. 287, 140 N.E. 773. We note that *Miller v. Korns*, *Methodist Children's Home*, and *Board of Education of Hancock County* all enjoy an almost contemporaneous genesis. Because the Supreme Court in *Miller v. Korns* found the legislative enactments it was reviewing to be valid and constitutional under Article VI, § 2 and because the observations in *Miller v. Korns* upon which the trial court in the matter *sub judice* relied were *dictum*, we find the Supreme Court's pronouncements in *Methodist Children's Home* and *Board of Education of Hancock County, supra*, much more pointed and persuasive than *Miller v. Korns*. Moreover, *Miller v. Korns* recognizes the establishment of a statewide system of schools as being a legitimate taxing purpose, and the Supreme Court also recognized therein that the

judiciary must defer to the legislature in the involved area of school finance. The *Miller v. Korns* court found *Sawyer v. Gilmore* (1912), 109 Me. 169, 83 Atl. 673 to be "exactly in point," and quoted from *Sawyer* as follows:

4. The particular method of distribution rests in the wise discretion and sound judgment of the Legislature.

The Constitution provides no regulation in this matter and it is not for the court to say that one method should be adopted in preference to another. We are not to substitute our judgment for that of a co-ordinate branch of the government working within its constitutional limits. (107 Ohio St. at 301.)

Thus, we sustain assignment of error three.

The penultimate assignment – the fourth – claims that the trial court erred by determining that the subject school financing statutes violate Ohio's equal protection clause contained in Article I, § 2 of the state constitution. The lower court concluded that discriminations existing in the educational opportunities of school children, created by the present financing system, impair the fundamental right to an education guaranteed by Article VI, § 2 of the Ohio Constitution. The trial court, applying strict judicial scrutiny,⁷ determined that no compelling state interest justified the discriminations between school children in Ohio.

Although the judiciary cannot package for the legislature a thorough and efficient system, courts nevertheless have the obligation to determine whether the system *in esse* contravenes the equal protection and benefit clause of the Ohio Constitution. A leading case in the area of education and equal protection is *San Antonio Independent School Dist. v.*

⁷ This step in equal protection analysis becomes necessary when a fundamental right is impinged. *Zablocki v. Redhail* (1978), 98 S. Ct. 673; *San Antonio Independent School Dist. v. Rodriguez* (1973), 411 U.S. 1.

Rodriguez (1973), 411 U.S. 1. In *Rodriguez*, the United States Supreme Court was faced with a challenge to the Texas system for financing public education on the basis of 14th Amendment equal protection guarantees. The Supreme Court first decided that strict scrutiny was not appropriate because education is not a right afforded protection under the *federal* constitution. By logical inference, if the Supreme Court had decided that there is a right to public education under the federal constitution, strict judicial scrutiny would have been the proper test. Since *Rodriguez* holds there is no such right, the court applied a less demanding "rational basis" test. Concurrently indicating its inclination to adhere to the principle of federalism, the Supreme Court then sustained the Texas legislation.

In the instant case, however, the statutory system is challenged on the basis of provisions in the *Ohio* Constitution, not the 14th Amendment to the U.S. Constitution. We agree with the trial court that the right to a public education is guaranteed by the *Ohio* Constitution. Article VI, § 2 – at least implicitly – endows the youth of *Ohio* of elementary and secondary school age with the fundamental right to the educational benefits which naturally flow from a "thorough and efficient system of common schools throughout the state." Moreover, the "equal protection and benefit" clause of Article I, § 2 of the *Ohio* Constitution requires that the educational opportunities available to school children should be equal.

Our obligation then becomes to determine whether the operation of the challenged statutes results in such inequality of educational opportunities as to impinge upon the fundamental right. For this purpose we turn to the trial record. First, the trial court clearly found that:

The uncontested evidence shows that not only are there vast disparities in expenditures for instruction and instructional components among the school districts in *Ohio*, but the testimony demonstrates that these expenditure variations also produce very great disparities in

the quantity and quality of the educational services which the districts provide to their students, and the Court so finds. (Trial court's Findings of Fact and Conclusions of Law, p. 157.)

Conclusions of the court below included the following:

**Violations of Article I, Section 2
Of The Ohio Constitution**

(7) An examination of the law and the evidence demonstrates that the disparate treatment which school children among the school districts in Ohio are accorded under the present system is the result both of the system in general and of the purpose and effect of certain specific statutes. Each of the separate statutes which have a demonstrably discriminatory purpose or effect upon school children is the subject of a separate contention on the part of the plaintiffs and each must be separately evaluated as a matter of law. In a larger sense, however, the ultimate fact of widely disparate expenditures per pupil among the districts and widely disparate educational offerings from substandard to high quality with most of the school children receiving offerings tending to be substandard, all of which are based upon disparities in property and income wealth, demonstrates that the entire system discriminates cruelly against a majority of Ohio's school children. (Summary, Findings of Fact and Conclusions of Law. P. 118.)

(8) There is a relationship in general between the total number of dollars per pupil which a school district has and the quantity and quality of the educational services which that district provides to its students. There is also a relationship in general between the delivery of educational services to children and the educational achievement of children. The differentials which exist in financial capacity among school districts represent real and immediate differences in potential educational achievement on the part of the school children in Ohio. Because the system is one in which vast dif-

ferentials in resources exist among the school districts, the present system for financing public elementary and secondary education in Ohio deprives the school children of Ohio of an essentially equal opportunity to achieve and advance educationally and equip themselves for future life. (Summary, Findings and Conclusions, p. 119.)

Our examination of the 7500-page transcript of proceedings impels us to decide that the evidence supports the trial court's findings and conclusions that the statutory system results in unequal educational opportunities for the children of Ohio.⁸ We now turn to the final analytical step required by *Zablocki* and *Rodriguez*, to apply a critical examination — in other words, strict scrutiny — to the state interest advanced in support of the financing sections. State interests cannot constitutionally interfere with the fundamental right of Ohio children unless the interests can be characterized as "compelling" and "closely tailored to effectuate only those interests."⁹

Appellants maintain that the compelling state interest reflected in the questioned statutes is the desirability of retaining and fostering local control over education. They emphasize the importance and necessity for local control — local determination — in a state as diverse as Ohio. They further insist that with local control, as authorized under the existing financial system, there is bound to be some disparity among the 617 school districts. However, we do not find local control to be a compelling state interest of the magnitude or per-

⁸ Considerable cogitation occurred concerning the extent to which this Opinion should go in chronicling how the evidence supports the judgment below vis a vis Article I, § 2. The record as it reached the Court of Appeals is colossal, including almost 400 pages of Findings of Fact and Conclusions of Law — and in addition, a 124-page summary thereof. Trial time below from commencement until filing of the Findings of Fact and Conclusions of Law consumed a full year. Since the entire record enjoys ready availability for interested scrutinizers, we perceive no justification for further lengthening this product by including specific examples of evidentiary material from the overall record.

⁹ *Zablocki v. Redhail*, 98 S. Ct. 673, *supra*.

susiveness which justifies interference with the fundamental right of this state's children equally to benefit from the state's system of public school financing. This court philosophically favors local control of public schools, but under the present system local control all to often means that local voters defeat school levies and therefore local school boards are forced to offer educational opportunities which are below par. The constitutional responsibility to provide for education rests with the legislature, and we cannot perceive a compelling state interest in local control which in effect thwarts the legislature in the exercise of this responsibility. We believe that there are other methods of financing the public school system which will maintain the salutary features of local control without the disequalizing effects fostered by the present system. Moreover, real property taxation seems a permissible ingredient of the funding system, as long as the state does not overrely upon it. The guiding constitutional principle must be equality of educational opportunity for all the children of Ohio rather than utilization of well intended but nevertheless miscarrying formulae such as the wealth neutral plan or the "reward for effort" program.

Therefore, we affirm the trial court's judgment that the system for public school financing in Ohio violates Article I, § 2 of the Ohio Constitution. As a result of the clear command of Article VI, § 2, the General Assembly should reexamine the state's public school financing system and enact a support plan conforming to the equal protection and benefit clause of Article I, § 2 of the Constitution of this state, a development which we believe should be forthcoming in the near future. Accordingly, we overrule the fourth assignment.

In the fifth and final assignment appellants urge that the trial court erred by determining this case to be properly maintainable as a class action under Ohio Civil Rule 23.

The first of two issues appellants present is as follows:

1. The class action requirement of Ohio Civil Rule 23 (C) (3) that the judgment include and describe

those whom the court finds to be members of the class is not satisfied and is, instead, ignored and violated where the class description is vague because:

- A. It expressly leaves the class definition "open-ended";
- B. It expressly characterizes the class as one "inappropriate to define . . . with . . . specificity";
- C. It generally describes the class as those "similarly situated" to a statutory entity (the Cincinnati City School District) while it expressly rejects definition of "similarly situated" in that it is "impossible to draw a precise line" separating class members who are and are not situated similarly to the statutory entity (the Cincinnati City School District);
- D. It depends upon the inclusion of statutory entities (school districts) when there is no such statutory entity named as a plaintiff in this case.

Civil Rule 23(C)(3) states:

(3) The judgment in an action maintained as a class action under subdivision (B) (1) or (B) (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class.

The trial court, in its judgment entry making the final class determination, described the plaintiff class of school districts in the following language:

- A. The school districts which comprise the plaintiff class of school districts include each school district which is similarly situated to the Cincinnati City School District in its financial inability to deliver to the school children it has the duty to educate that level and quality of educational opportunity which is mandated by Article VI,

Section 2 and Article I, Section 2 of the Ohio Constitution.

The court further stated:

Because of the multiplicity of factors which bear upon the ability of a district to provide the level and quality of educational opportunity which the Ohio Constitution requires, it is impossible to draw a precise line separating the districts in this state which are situated similarly to the Cincinnati District in ability to provide a constitutionally acceptable level and quality of education from those which are not similarly situated. It is clear from the evidence, however, that all but a small percentage of the school districts in Ohio are financially unable to provide a constitutionally acceptable level of education at the present time.

Moreover, it is necessary that the class consideration in this litigation remain openended. It is obvious that any line drawn now for the purpose of excluding any school districts from the plaintiff class would doubtless have to be modified in future years. Thus, it is inappropriate to define the plaintiff class of school districts with more specificity than as stated above.

First we address the appellants' challenge to the classification of "school districts" when no such statutory entity is named as a plaintiff in the case. We note that in the first paragraph of the complaint the statutory entity is named as "the Board of Education of the City School District of Cincinnati (sometimes referred to herein as the Cincinnati School District)." We view these terms to be interchangeable for purposes of this action, and find appellants' argument contrariwise to lack merit.

We next consider the alleged error that the court found

it impossible to draw a precise line separating districts similarly situated to Cincinnati in ability to provide quality education from those districts not similarly situated. In a Civ. R. 23(B)(2)¹⁰ class action, in which plaintiffs pray for injunctive or declaratory relief with respect to the class as a whole, such as here, the fact that the class lines cannot be precisely drawn is not a fatal flaw. The Advisory Committee Notes to Federal Rule 23 state that 23(B)(2) actions have often been filed "in the civil rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration." Because the relief sought here is not money damages for individual class members as in a 23(B)(3) class suit or the distribution of money from a common fund as in a 23(B)(1) suit, a failure to name the members of the class with exactitude fails to prejudice the defendants-appellants. The U.S. Court of Appeals for the First Circuit has pointed out further distinguishing characteristics of a 23(B)(2) suit:

[N]otice to the members of a (b)(2) class is not required and the actual membership of the class *need not therefore be precisely delimited*. In fact, the conduct complained of is the benchmark for determining whether a subdivision (b)(2) class exists. . . . (Emphasis supplied.)

Yaffe v. Powers (1st Cir. 1972), 454 F.2d 1362. We do not find that the trial court violated the requirements of Civ. R. 23 in its description of the class as one "inappropriate to define . . . with . . . specificity."

Appellants also take issue with the trial court's characterization of the class as "openended," and we note in con-

¹⁰ The judgment entry begins by referring to this suit as a Civ. R. 23(B)(1) class action, although it later describes the suit as one brought under the provisions of Civ. R. 23(B)(2). The former designation is obviously an error since the relief sought is declaratory and injunctive in nature, thus causing the action to fall within the scope of Civ. R. 23(B)(2).

nection therewith that the final class determination also includes the words "future years." This reference to "future years" troubles us somewhat because we believe the class ought not to be indefinitely variable. We elect to interpret the openended feature of the final class determination order as signifying "districts situated similarly to the Cincinnati district" at the time of trial or, at the latest, on the date of the final judgment below. We have difficulty in conceiving of a situation in which a class can be enlarged after a final judgment entry concludes the litigation. However, we find no fatal significance to use of the phrase "future years," but we do circumscribe the concept of openendedness as indicated.

The second issue raised by appellants in this assignment follows:

2. The prerequisites for a proper class action determination as set out in Ohio Civil Rule 23(A) are not satisfied or complied with where named plaintiffs do not themselves have claims typical of the claims asserted on behalf of the class and where named plaintiffs take positions and assert arguments designed to defeat, rather than protect, interests of class members.

The thrust of appellants' argument here is that the interests of the alleged class members are inherently conflicting. For instance, appellants argue, the named plaintiff (Board of Education of the City School District of the City of Cincinnati) cannot represent both those districts which receive benefits such as "save harmless" funds and those districts which do not. This theory apparently presupposes that the interest which a class member seeks to vindicate through this litigation is somehow limited to the benefits which that class member now receives under the financing system. However, we perceive that the interests of the plaintiff class are broader than this. In seeking a declaration that the entire financing system results in unequal educational opportunity, the class members' paramount interest is to secure a system of financing

through which every member of the class will have sufficient financial resources to provide the educational opportunities necessary for the school children of the districts. Within this conceptual framework — and without being inconsistent — the plaintiffs may demonstrate that benefits now accrue unequally to districts in the class.¹¹ Although some diversity exists in the class so far as financial support is concerned, nevertheless we find no *conflicting* interests in the class of districts as certified.

Accordingly, we hold that a class action was proper in this case and overrule the assignment.

Recapitulating, we overrule assignments one, two, four and five, and although we find merit in the third — and sustain it — the judgment below must be, and is, hereby affirmed. As we have written in connection with assignment three, the trial court erred in holding the school financing plan in violation of the "thorough and efficient system" clause of Article VI, § 2 of this state's constitution, but the "equal protection and benefit" clause of Article I, § 2 of the constitution nevertheless provides a proper fundamennt for the judgment of the Court of Common Pleas.

BETTMAN, J., and BLACK, J., concur.

PLEASE NOTE:

The Court has placed of record its own entry in this case on the date of the release of this Opinion.

¹¹ Although facially the scope of this fifth assignment would seem to include a challenge to the certification by the trial court of *any* of the subject classes, nevertheless as the appellants frame their issues (under the assignment), the principal thrust of the challenge is to the certification of the class of school districts. Therefore, we have evaluated the issues as thus framed. Some exiguous argument is included in appellants' brief questioning the certification as a class of all the state's public school children, but the issue is not broadly pursued and moreover we perceive no merit to the contention.

COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

September 5, 1978

No. C-780001

BOARD OF EDUCATION OF THE
CITY SCHOOL DISTRICT OF THE
CITY OF CINCINNATI, et al.,

Plaintiffs-Appellees,
v.

FRANKLIN B. WALTER,
Superintendent of Public Instruction, et al.,
Defendants-Appellants.

JUDGMENT ENTRY

This cause came on to be heard upon the appeal on questions of law, assignments of error, the record from the Court of Common Pleas of Hamilton County, Ohio, the briefs and the arguments of counsel.

Upon consideration thereof, the Court finds that Assignment of Error Number 3 is well taken, and that the remaining Assignments are not well taken for the reasons set forth in the Opinion filed herein and made a part hereof.

It is, therefore, Ordered by the Court that the judgment of the Court of Common Pleas of Hamilton County, Ohio, which holds the statutory system for financing public schools in Ohio, and certain specific statutes, unconstitutional in violation of the equal protection and benefit clause of Article I, § 2 of the Ohio Constitution is hereby affirmed.

It is further Ordered that a mandate be sent to the Court of

Common Pleas of Hamilton County, Ohio, for execution upon this judgment.

Costs to be taxed in compliance with Rule 24, Appellate Rules.

And the Court being of the opinion that there were reasonable grounds for this appeal, allows no penalty.

It is further Ordered that a certified copy of this Judgment, with a copy of the Opinion attached, shall constitute the mandate pursuant to Rule 27, Ohio Rules of Appellate Procedure.

To all of which the appellants, by their counsel, except.

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

December 5, 1977

No. A7602725

BOARD OF EDUCATION OF THE
CITY SCHOOL DISTRICT OF THE
CITY OF CINCINNATI, et al.,

Plaintiffs,

On behalf of themselves and as representative parties on behalf of all similarly situated school districts in Ohio, the members of the boards of education for such school districts, all administrators employed by such school districts, the students who reside therein and attend public elementary and secondary schools operated by such school districts, the parents of such students, and the owners of real property situated in such school districts.

v.

FRANKLIN B. WALTER,
Superintendent of Public Instruction, State of Ohio,
808 Ohio Departments Building, 65 South Front
Street, Columbus, Ohio 43215, et al.,

Defendants.

**DECLARATORY JUDGMENT ORDER AND
JUDGMENT ENTRY**

The Court finds that there is no just reason for delay in acting upon the plaintiffs' claim for declaratory relief and that, indeed, the interests of the plaintiffs and the general public require that such a final order be now made. In

making this order, however, the Court recognizes that there are additional claims presented by the Complaint, including a claim for attorneys' fees, over which the Court is expressly reserving jurisdiction at this time and which will be decided, when appropriate, as the rights of the parties and the interests of justice require.

In consideration of the entire record in the case and the applicable law, and in consideration of the FINDINGS OF FACT AND CONCLUSIONS OF LAW filed contemporaneously herewith, the Court hereby makes the following ORDER:

In accordance with O.R.C. § 2721.02, the Court declares, adjudges and decrees:

(a) that the statutory system which the General Assembly has established for financing public elementary and secondary education is depriving the members of the plaintiff class of school children of the rights conferred upon them by Article VI, § 2 of the Ohio Constitution to attend school in a thorough and efficient system of common schools throughout the state and by Article I, § 2 of the Ohio Constitution to equal protection of the laws;

(b) that this system is interfering with and impairing the discharge of oaths taken by members of the plaintiff classes of school board members under Article XV, § 7 of the Ohio Constitution and O.R.C. § 3313.10 to support the constitution of this state and to perform faithfully their duties, and the discharge by such school board members of the duties imposed upon them by O.R.C. § 3313.47 to manage and control all public schools and by O.R.C. § 3313.48 to provide for the free education of the youth of school age within each district, and that it is interfering with the discharge by the members of the plaintiff class of school district administrators of their duties provided by law;

(c) that the statutory system which the General Assembly has established for the financing of public elementary and secondary education represents the abdication by the Gen-

eral Assembly of the duty which devolves upon it under Article VI, § 2 of the Ohio Constitution to "make such provision . . . as will secure a thorough and efficient system of common schools throughout the state;

(d) that O.R.C. §§ 3317.022, 3317.023 (A), (B) and (C), 3317.53 (A) and (B), 3317.02(E), and Section 30 of Am. Sub. SB 221 violate Article VI, § 2 of the Ohio Constitution and are therefore void and no longer operative;

(e) that the statutory system which the General Assembly has established for the financing of public elementary and secondary education establishes invidious classifications among school children which are neither supported by any compelling state interest nor predicated upon any rational basis, and that the system thus violates the equal protection and benefit clause of Article I, § 2 of the Ohio Constitution;

(f) that O.R.C. §§ 3317.022, 3317.023 (A), (B) and (C), 3317.53 (A) and (B), 3317.02(E), and Section 30 of Am. Sub. SB 221 violate Article I, § 2 of the Ohio Constitution and are therefore void and no longer operative.

The Court hereby declares that O.R.C. §§ 3317.022, 3317.023 (A), (B) and (C), 3317.53 (A) and (B), 3317.02(E), and Section 30 of Am. Sub. SB 221 are unconstitutional and hence void and hereafter inoperative.

The Court realizes, however, that the funds which are paid to school districts in basic aid under O.R.C. § 3317.022 are essential to the continued operation of most of the school districts in the state. The Court also realizes that the enactment of a valid statutory system for financing public elementary and secondary education may reasonably consume six months' time and that the ends of justice would not be served by an order which would further cripple the public schools during the balance of the 1977-78 school year.

In light of these considerations, the Court hereby suspends the effect of this order until July 1, 1978.

Defendant's Exceptions Preserved.

The Clerk is directed to enter this document as the Judgment Entry of this Court on the plaintiffs' claim for declaratory relief.

SO ORDERED.

/s/ PAUL E. RILEY
Judge, Court of Common Pleas
Hamilton County, Ohio
(by assignment)

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DNA, Wash., D.C. 20537

Supreme Court, U.S.

FILED

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KODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79 - 615

BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF
CINCINNATI, ET AL.,

Petitioners,

v.

FRANKLIN B. WALTER, SUPERINTENDENT
OF PUBLIC INSTRUCTION, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

VOLUME II

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VOLUME II

(Findings of Fact and Conclusions of Law)

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

No. A7602725

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF CINCINNATI, ET AL.
PLAINTIFFS

vs.

FRANKLIN B. WALTER, SUPERINTENDENT
OF PUBLIC INSTRUCTION, ET AL.
DEFENDANTS

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

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ADOPTED AND FILED BY THE COURT,
DECEMBER 5, 1977

[INDEX OMITTED]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court comes now to file its findings of fact and conclusions of law pursuant to Rule 52 of the Ohio Rules of Civil Procedure.

At the conclusion of the evidentiary presentations, counsel on both sides requested extended time to formulate their proposed findings of fact and conclusions of law. Those were filed on November 28, 1977.

The Court has reviewed the filings of the parties and has concluded that those of the plaintiffs are amply supported by the record and the applicable law. Therefore, the Court adopts in their entirety the findings of fact and conclusions of law submitted by the plaintiffs.

FINDINGS OF FACT

I. INTRODUCTION

This is a class action seeking declaratory and ancillary relief challenging, under four provisions of the Ohio Constitution, the constitutionality of the entire system which the General Assembly has enacted for the financing of public elementary and secondary education in Ohio. The plaintiff classes are those which include all of the school districts in Ohio, all of the members of the boards of education for such districts, all of the administrators employed by such districts, all of the students who reside in Ohio's school districts and who attend public elementary and secondary schools, all of the parents of such students, and all of the owners of real property and personal property used in business who reside in Ohio school districts. The action was preliminarily certified as a class action, pursuant to the provisions of Civil Rule 23. At the conclusion of their case in chief, the plaintiffs filed a proposed amended class action order which the Court

has adopted and placed of record. The order is included herein *infra*.

The plaintiffs contend that the Ohio Constitution guarantees to every school age child resident in this state the right to attend school in a thorough and efficient system of common schools financed by public funds, and that the Constitution further makes the provision of such an educational opportunity a direct responsibility of state government. If a school district is unable to secure sufficient revenue from property taxation to operate its schools in a thorough and efficient manner, the state must provide such additional funds as are necessary to make the school system in that district thorough and efficient. Since the duty to finance a thorough and efficient system of public education is the state's duty, the failure of any school district to carry out that function is a failure of the state, itself, to carry out the command of its Constitution.

The plaintiffs assert that the state may not constitutionally delegate the responsibility for financing education to the school districts unless those school districts have the financial resources to provide a thorough and efficient system of common schools. They further assert that the system of educational financing presently in effect in Ohio does not fulfill the thorough and efficient mandate of the Constitution because, as is the case with the Cincinnati School District, certain school districts are not able to raise sufficient revenue through property taxation to provide a thorough and efficient system of public education for the children whom the state has the responsibility to educate. The existence of this condition places the state's system in violation of both the thorough and efficient clause and the equal protection and benefit clause of the Ohio Constitution because the children attending school in the Cincinnati School District and other similarly situated school districts are deprived of the opportunities which a thorough and efficient system for financing public education in this state would provide them, and because educational levels in the Cincinnati district and many other simi-

larly situated districts have progressively deteriorated, both quantitatively and qualitatively, during the last ten years and will predictably continue to deteriorate further in the immediate future due to the failure of the state to carry out its financial obligation to the children of Ohio. The General Assembly has thus failed to deliver to the school children in the Cincinnati School District and other similarly situated districts the educational opportunities which the Ohio Constitution guarantees to them.

The plaintiffs contend, further, that because the system for financing education in this state operates in such a manner as to treat school children in the various school districts of Ohio unequally — that is, in such a manner that the educational opportunities available to children in certain districts are substantially greater than those available to children in other districts — and because the quality of the education available to children throughout Ohio depends not upon fiscally neutral and educationally relevant criteria, but upon the property wealth and income wealth of the residents of school districts and upon the willingness of those residents to vote in favor of property tax levies, the system deprives the school children in Ohio of the equal protection of the laws and the benefit of the government.

In their comprehensive complaint, the plaintiffs contend that the entire system which the General Assembly has enacted, including certain provisions of Chapter 3317 O.R.C. known as the school foundation program, under which public elementary and secondary education is financed, violates the following specific provisions of the Ohio Constitution:

(1) Article VI, Section 2, which provides that "the General Assembly shall make such provision, by taxation or otherwise, as . . . will secure a thorough and efficient system of common schools throughout the state . . ." (known as the thorough and efficient clause);

(2) Article VI, Section 3, which provides that "Provision shall be made by law for the organization, administration and

control of the public school system of the state supported by public funds . . ." (known as the educational support clause);

(3) Article I, Section 2, which provides that "All political power is inherent in the people. Government is instituted for their equal protection and benefit." (known as the equal protection clause); and

(4) Article II, Section 26, which provides that "All laws of a general nature shall have uniform operation throughout the state." (known as the uniform operation clause)

The plaintiffs characterize the present system as being one which places upon the school districts in Ohio the burden of raising, through the levy of a tax upon property located in the districts, an excessive portion of the current operating funds necessary to meet the above stated constitutional mandates and statutory duties. They allege that the School Foundation Program established in Chapter 3317 O.R.C. causes the funds which the local school districts are able to raise in that manner to be supplemented with money derived on a statewide basis from other revenue sources, that the boards of education of the school districts are largely dependent upon the funds raised from these two sources to meet the cost of educating children attending the public schools therein, and that such sources are inadequate to enable the Board of Education for the Cincinnati School District and the boards of education for similarly situated school districts to deliver to the school children they have the duty to educate the educational services which are required by the thorough and efficient and equal protection clauses of the Ohio Constitution.

The plaintiffs assert that the Ohio system of public school finance contains the following principal revenue and expenditure features:

Chapter 5705 O.R.C., known as the Tax Levy Law, authorizes the board of education of each school district to levy taxes for current operating expenses upon taxable property located within the school district and listed on the general tax lists and duplicates. Such taxable property includes

all real estate (except such as is expressly exempted) and all personal property used in business. Such statutory authority, however, is subject to the limitation, popularly known as the "ten-mill limitation," imposed by (i) Article XII, Section 2 of the Ohio Constitution, which provides that "No property, taxed according to its value, shall be so taxed in excess of one percent of its true value in money for all state and local purposes" unless approved by at least a majority of the electors of the taxing district voting on such proposition, and (ii) Section 5705.02, O.R.C., which limits the aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit to ten mills on each dollar of tax valuation (taxable value) of such subdivision, unless specifically authorized by the voters thereof. As a consequence, any school district which, in order to meet current operating expenses, desires to impose a property tax, the rate of which, when added to the rate of existing taxes for school and all other local government purposes upon property within such school district, will result in a combined tax rate in excess of 1% (10 mills) of taxable value, must submit such tax to the voters of such school district for their approval. Unlike municipal corporations, which are authorized by law to levy earnings and income taxes, school districts are not authorized by law to levy any type of tax other than a property tax.

The present school finance system came into existence August 29, 1975, when Amended Substitute Senate Bill 170 became effective. That bill substantially modified Chapter 3317 O.R.C., commonly known as the School Foundation Law. This law, which is administered by the defendant State Board of Education with the approval of the defendant Controlling Board, provides for the payment of supplemental funds, calculated in accordance with the provisions of such chapter out of moneys in the state treasury derived from all sources, to school districts with current school tax levies of at least twenty mills. Subject to certain provisions for

minimum support and guarantees, Chapter 3317 contains, *inter alia*, the following provisions:

Without regard to the differentials existing among the various school districts in Ohio in the cost of providing a thorough and efficient system of public education to the children located in such districts, and without regard to whether or not the children resident in any one of the districts are receiving an educational opportunity equal to that received by the school children in other school districts, Chapter 3317 provides that each qualifying school district (i.e. each district in which the voters have approved a school tax levy for current expenses in the minimum amount of 20 mills per thousand dollars of taxable property valuation) will receive state basic aid in an amount which, when added to local tax revenue, will total \$960 per year per pupil in average daily membership, when the law is fully funded. This sum results from Section 3317.022 O.R.C., which guarantees (at full funding) to each school district state basic aid in an amount which, when added to local revenue, will total \$48 per pupil in average daily membership per mill for each of the first 20 equalized mills levied per thousand dollars of taxable valuation.

Without regard to the differentials existing among the various school districts throughout Ohio in the cost of providing a thorough and efficient system of public education to the school children located in any such districts, and without regard to whether or not the school children located in any one of the districts are presently receiving an educational opportunity equal to that provided to the school children in other school districts in Ohio, the law provides for the payment of a basic aid bonus to those school districts having school tax current expense levies in excess of 20 equalized mills per thousand dollars of taxable property valuation. Such statutory provision, which is contained in Section

3317.022 O.R.C., guarantees to each participating school district, at full funding, payment of basic aid which, when added to local revenue, will total \$42 per pupil in average daily membership per mill for each state equalized mill levied for current expenses in excess of 20 mills, up to a maximum of 30 mills per thousand dollars of taxable property valuation. Provision for such payment is made without regard to the ability, or lack thereof, of a school district to secure voter approval of school tax levies for current expenses in excess of 20 mills per thousand dollars of taxable property valuation. That element of the present system is known popularly as the "reward for effort."

Although Am. Sub. SB 170 provides for categorical grants for special education (handicapped) and vocational education students and for certain other programs and services, the amount of categorical aid is not sufficient to provide adequately for the students and services it is designed to subsidize, and this insufficiency is particularly acute in urban districts which have disproportionately large populations of vocational educational students, special and children who are A.D.C. recipients.

Plaintiffs' supplemental complaint, which was filed by leave of the Court after the Supreme Court of Ohio declared Governor Rhodes' line item veto of certain provisions of Am. Sub. S.B. 170 void, alleges that Section 3317.023 O.R.C. which penalizes school districts for non-compliance with mandates relating to the training and experience of classroom teachers, number of educational service personnel employed and pupil-teacher ratios, and which rewards school districts for compliance with such mandates, establishes an invidious discrimination among the school children of Ohio in that it causes the children enrolled in those school districts which lack the resources to comply with the mandates to suffer financial detriment, and provides a financial benefit to those children

enrolled in the districts which have the resources necessary to comply with the mandates.

The plaintiffs assert in general that the Ohio system places excessive reliance upon property taxation on a district by district basis, and compounds the evil of such excessive reliance upon property taxation by keying the amount of basic state aid available to each school district to the willingness of its voters to approve increases in the tax rate. They allege also that, since the voters of many school districts are unwilling or unable to approve property tax rate increases, the children in those school districts are deprived not only of adequate amounts of state basic aid but also of adequate amounts of dollars for educational purposes which are derived from local property taxation.

The plaintiffs contend, moreover, that the school children in urban and central city districts, such as the Cincinnati School District, are further deprived because the system fails to compensate such districts for the multiple financial burdens of urban government which cut heavily into the tax base and correspondingly reduce the number of dollars which those bases are capable of generating for educational purposes. Such failure is especially onerous because those school districts which are penalized by municipal overburden are the ones whose educational needs and costs are the highest in the state.

The plaintiffs allege that the laws now in effect perpetuate enormous disparities in per pupil expenditures among the various school districts, and that these disparities bear no relationship to actual educational costs. The laws restrict the state's role to that of supplementing the revenues which school districts are able to generate by means of the property tax, and they restrict direct state participation in the financing of public education to approximately one-third of the total moneys now available, thus placing excessive reliance upon the local property tax, which is a demonstrably inadequate and unreliable source of funds.

The plaintiffs contend that, in relying upon property taxation and in linking the level of state support to the millage rate of a school district, the system perpetuates the evil of making the quality of a child's education a function of the wealth of the residents of his school district, and it brings into play yet another evil — that of consigning the fate of school children to the wholly irrational factor of voter caprice at a time when voter resistance to all forms of taxation is at an all-time high. The plaintiffs assert that the system fails to utilize adequate amounts of revenue from other and new sources of state revenue, principally the state income tax, the burden of which has made voters hyper-resistive to approving increases in the rate of property taxation.

The plaintiffs ask that this Court declare the present system unconstitutional and make such ancillary orders as the rights of the plaintiffs require.

The defendants' answer to the plaintiffs' complaint is essentially a general denial. Thus, their defenses must be derived from their briefs supporting their motion to dismiss and their two opening statements, one of which was deferred until after the conclusion of the plaintiffs' case in chief. In their briefs and opening statements, defense counsel contend principally that:

The complaint is insufficient because the plaintiffs appear to assert that equal educational opportunity requires that the state make available to every district an equal number of dollars per pupil; the General Assembly has considerable latitude in discharging its duty under the thorough and efficient clause; the scope of this Court's inquiry is limited; the wisdom of the statutory plan is not an issue.

The defendants further asserted that the right to an education established by the Constitution is not a fundamental right "requiring absolute equality between school districts as to services and facilities"; Ohio's Equal Protection Clause is to be construed "coextensively with the Equal Protection Clause of the Fourteenth Amendment" and that therefore the plaintiffs' Equal Protection complaint is foreclosed by the

Supreme Court's opinion in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973); education is not a fundamental state right under the Ohio Constitution. Thus, the state need only show that the system for financing public education is predicated upon a rational basis.

The defendants asserted that the present system is valid because it is designed to equalized property tax values and access to state basic state aid dollars; the plaintiffs appear to contend that the school finance system should underwrite the cost of municipal government, but such an undertaking is not a responsibility of a school finance system; O.R.C. Chapter 3317 is a "major legislative effort to organize, administer and control the public school system through support by public funding" in compliance with Article VI, Sections 2 and 3 of the Ohio Constitution, and it is "reasonably designed to prevent a starvation of funds and a lack of teachers, buildings and equipment; and, as per the Supreme Court's direction in *Miller v. Korns*, 107 Ohio St. at 298, and that is all that is required;" the system is rational and fair "because the foundation program includes not only adjustments to equalize valuations on a state-wide basis but also provides for added funds, to compensate for municipal overburden, which are determined . . . on the basis of how many students within a school district receive ADC;"

The defendants contended that the Cincinnati School District is in financial distress because it has not made an adequate effort to pass school tax levies; the plaintiffs are insisting that the state has an obligation to provide such things as violin lessons, breakfast, lunch and dinner for school children; that they want children to be happy in their junior high school and to be on winning football teams. Such things are not part of a minimum educational system; the state has a duty to provide only a minimal educational program; the Cincinnati School District is one of the richest school districts in the state; the reason that it has financial problems is that it does not levy enough mills; it would not be a terrible burden on the taxpayers in the Cincinnati district to levy 30

mills; and the district would receive an additional \$10,000,000 per year from such a levy; large school districts do not have uncompensated costs that are greater than small districts because of economics of scale; districts such as Cincinnati and others which are short of funds are inefficient, wasteful and bureaucratic; the Cincinnati District always finds the money to keep its schools open; the Legislature, and not the Court, should determine the level of funding; the state is making an honest effort to straighten out any problems which the system might have with a \$550,000 grant it just received from the federal government; the Legislature will solve the situation before the case is concluded; the Court should test Am. Sub. SB 170 by comparing it to the prior system and by estimating how successful it will be in the future; Am. Sub. SB 170 requires both standards and reports. These are its most important features; Am. Sub. SB 170 has worked toward fiscal neutrality in its first year; Ohio has an immense investment in education; the differing needs of students are being met by the system; there is progress in education in Ohio; the thorough and efficient clause embodies a changing concept; and the system is responsive to it; the thorough and efficient standard cannot be measured in dollar terms. The dollar distribution formula of Am. Sub. SB 170 is a secondary consideration; dollars do not equal education. Education cannot be measured in those terms; and finally, local control of education is required for continued responsiveness of the educational system.

The Court finds and concludes that the plaintiffs have proved every material allegation of their complaint with clear and convincing evidence and, indeed, have proved far more concerning the sorry state of public education in Ohio and the collapse of the school funding system than they originally alleged.

The Court finds that members of the plaintiff classes of school districts, boards of education, school district administrators, school children and parents of school children are sustain-

ing substantial and irreparable harm by reason of the present system for financing elementary and secondary education, specifically through the operation of specific statutes which the court has concluded are unconstitutional. The plaintiffs have no adequate remedy at law. The Court's specific findings of fact and conclusions of law follow.

II. EVOLUTION OF SCHOOL FINANCE IN OHIO

(1) Except for the very earliest years in Ohio's history when the machinery established by the Northwest Ordinance for financing public schools was in effect,¹ public elementary and secondary schools in Ohio were financed, until 1935, solely through the proceeds from local property taxation. The ability of school districts to finance themselves by this means was limited, however, by constitutional and statutory restrictions which have been carried over to the present time. (Tr. 136, 137, 139).

(2) Those limitations,² which are now codified in Chapter

¹ The Northwest Ordinance provided that the proceeds from the sale of land in each township would be used to support public education. (Tr. 136).

² Chapter 5705 of the Ohio Revised Code, The Tax Levy Law, authorized the board of education of each school district, to levy taxes for current operating expenses upon taxable property located within the school district and listed on the general tax lists and duplicates. Such taxable property includes all real estate (except such as is expressly exempted) and all personal property used in business. This statutory authority, however, is subject to the limitation, popularly known as the "ten-mill limitation," imposed by (i) Article XII, Section 2 of the Ohio Constitution, which provides that "No property, taxed according to its value, shall be so taxed in excess of one percent of its true value in money for all state and local purposes" unless approved by at least a majority of electors of the taxing district voting on such proposition, and (ii) Section 5705.02 of the Ohio Revised Code, which limits the aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit to ten mills on each dollar of tax valuation (taxable value) of such subdivision, unless specifically authorized by the voters thereof.

5704, O.R.C., specifically § 5701.01 and 5705.02, and Article XII, § 2 of the Ohio Constitution, have operated and continue to operate to restrict the taxing powers of school districts. Any school district which, in order to meet current operating expenses, desires to impose a property tax, the rate of which, when added to the rate of existing taxes for school and all other local government purposes upon property within such school district, will result in a combined tax rate in excess of 1% (10 mills) of taxable value, must submit such tax to the voters of such school district for their approval. Unlike municipal corporations, which are authorized by law to levy earning and income taxes, school districts are not authorized by law to levy any type of tax other than a property tax.

(3) In 1935 the General Assembly enacted a form of state subsidy to school districts which provided approximately 50% of the school districts' total revenues in the form of modified flat grants per pupil. (Tr. 139).

(4) That statute (Section 7600-1 to 7600-8, General Code), which enacted the first state aid program for school districts, made reference to the provisions of Article VI, § 2 of the Ohio Constitution in declaring the purpose of the legislation to be that of:

creating a public school fund in the state treasury and providing for the distribution thereof, with a view of providing a thorough and efficient system of common schools throughout the state promoting economy and efficiency in the operation thereof, and providing for the equalization of educational opportunities.

(5) Thus, 42 years ago the General Assembly announced that its statutory objective was to establish education and provide equality of educational opportunity for the school children of Ohio.

(6) In 1956 the General Assembly modified the state system for financing the public schools, adopted the first form

of a school foundation program, and established the State Board of Education. The statute establishing the Board (O.R.C. § 3301.07) empowered it to "formulate and prescribe minimum standards to be applied to all elementary and high schools in this state for the purpose of requiring a general education of high quality".

(7) Thus, again in 1956 the General Assembly reiterated the policy of the State to be that of providing to the school children of Ohio a high quality education.

(8) The foundation program, which was in effect in various forms until 1975 when the present system was enacted, was known as a Strayer-Haig system.³ It was designed to supplement the local tax revenues of the school districts in order to assure that all districts received enough funds to provide certain specified educational programs. The amount of state subsidy to each district was supposed to relate to the actual cost of providing the educational services. (Tr. 141).

(9) The last form which the foundation program assumed was enacted in HB 475 in 1971. That law, Chapter 3317 of the Ohio Revised Code, provided for basic state aid in the amount of the greater of: (a) allowances for each approved classroom unit of certain enumerated types of special education classes and extended service contracts plus the sum of \$660 of combined state and local funds per pupil in average daily membership. This amount was limited to the portion of such figure which was in excess of a figure derived by multiplying 25 mills times the tax valuation of the district, or (b) a flat grant sum calculated by multiplying the number

³ The Strayer-Haig system was formulated in 1923 by Strayer and Haig who conducted a study of the New York finance system and issued a report in which they recommended changes. Their system is a variable grant type system in which state aid is provided in inverse relationship to the assessed valuation of the school district. The purpose is to supplement local revenue so that all districts have sufficient resources to provide the educational programs. (Tr. 142).

of pupils in average daily membership times an amount per pupil fixed by statute, which was graduated from a high figure of \$179 per pupil in districts whose taxable property valuation per pupil was less than \$20,000 to a low figure of \$75 per pupil for districts whose taxable property valuation per pupil was \$32,000 and over.

It also provided categorical assistance for certain special needs and programs, such as transportation, vocational education units, special education units, classroom teachers with higher-than-average training and experience, and municipal overburden. (Tr. 169-175).

(10) Modifications to this foundation program were made by the General Assembly in subsequent sessions of the Legislature in the form of numerous separate guarantees and the system thus became substantially disequalized. (Tr. 184).

III. DESCRIPTION OF PRESENT SYSTEM IN GENERAL

(1) In 1975 the General Assembly enacted Amended Substitute Senate Bill 170, which materially altered the theory and form of the system for financing elementary and secondary education. It supplanted the guarantee-encrusted foundation formula which had been in effect in various forms since 1956 with a modified form of a school financing system known as "district power equalizing"⁴ designed to "equalize" the "taxing power" of school districts and to "reward" districts for making an extra "tax effort". (Tr. 187-188).

(2) Although Amended Substitute Senate Bill 170 altered the theoretical approach of the state to financing public education in Ohio, it did not create an educational climate appreciably different than that of the prior system.

⁴ A district power equalizing formula provides for an equal amount of combined state and local support on any given property tax millage. The purpose is to provide an equal yield to all districts which levy equal millage, regardless of the districts' assessed valuation. (Tr. 188).

IV. ANALYSIS OF MECHANICS OF THE PRESENT SYSTEM

(1) O.R.C. § 3317.022, which was enacted as part of Am. Sub. SB 170 establishes a complicated formula for determining the amount of state aid which a school district will receive each year. One phase of the aid is called Basic Program Support and the other Categorical Program Funding. (Tr. 1719).

(2) Basic Support is calculated for each district on a complicated formula which pegs the level of each district's state funding to a mathematically "equalized" level of property wealth and a mathematically "equalized" tax rate. It also rewards districts which levy more than 20 school operating mills commensurately with their millages up to 30 mills. This last element is called "reward for effort". The entire basic support formula is referred to as "guaranteed yield" and "equal yield" and is a variation of a type of school financing called "district power equalizing", "power equalizing", "DPE" and "percentage equalizing". Its objective purports to be that of "equalizing" the property wealth bases upon which the school districts raise operating revenue through the levy of voter-approved taxes so that school districts receive the same number of dollars per pupil in basic state aid plus local revenue for each mill levied up to 30 mills. (Tr. 1719, 1734).

(3) The system does not equalize the ability of school districts to increase school millage rates, however. Nor does it purport to equalize the income wealth of the residents of school districts. Indeed, the "reward for effort" element operates to enlarge the disparities in school operating revenues which exist among the districts based upon their different tax rates and differing taxing abilities. Because the formula establishes an arbitrary property wealth ceiling of \$48,000 per pupil, which is lower than the tax duplicates of some of the districts, disparities in educational resources based upon property wealth, as well as disparities based upon tax rates,

continue to exist among Ohio's school districts. (Tr. 4510-4512, 3186-3187).

(4) In addition, the system provides "save-harmless" guarantees which reward certain districts with extra funds based upon the amount of basic state support they received under the prior system, without regard to the present needs of the districts or their actual entitlements under the present basic support formula. It also rewards some districts and penalizes others depending upon their compliance or non-compliance with certain mandated requirements. As of this time, the Legislature has not appropriated sufficient funds in order to compensate the districts fully in accordance with the formula. (Tr. 1738-1740).

(5) In categorical funding, the state provides specific amounts of money for approved units of special education students (students having special needs because they are deaf, blind, crippled, emotionally disturbed, neurologically impaired or educably mentally retarded), for units for vocational education students, for gifted children, for those needing occupational and physical therapy, speech and hearing therapy and provides specific amounts of money for extended service and for transportation. The state also provides a subsidy called Disadvantaged Pupil Impact Aid, which is calculated on the percentage of the students enrolled in the district who receive Aid to Dependent Children. Categorical Aid is restricted and can be used only for the education of the categorical students. The use of Impact Aid is unrestricted. (Tr. 1719-1720).

(6) Plaintiffs' Exhibit 41, as explained by Carl H. Heimerdinger, Clerk-Treasurer of the Cincinnati Board of Education,⁵ illustrates the mechanical calculations necessary to de-

termine the state aid which a school district receives. That exhibit is the Ohio Department of Education Division of School Finance SF-12, 1975-76, Revised Calculation for Cincinnati City School District. Lines 1 through 13 represent the calculation of Basic Program Support. Lines 14 through 20 represent the calculation of Categorical Program Funding. (Tr. 1721-1723).

(7) Lines 1, 2 and 3 depict the number of children enrolled in the district's schools (called average daily membership, ADM) who will be counted for purposes of the basic support formula. These figures are taken from the districts' membership reports to the Ohio Department of Education reporting the number of students in attendance the first week of October. In the event that the membership is declining, the average of the present year and the prior two or three years is used. The students who are enrolled in special education and vocational education units are excluded from the ADM as are $\frac{1}{2}$ of the children enrolled in kindergarten and $\frac{3}{4}$ of the children enrolled in joint vocational and contract programs. The Basic ADM for the Cincinnati School District for 1975-76 was 60,716. (Tr. 1723-1724, Plaintiffs' Exh. 41).

(8) The next step in the calculation, which is on line 4 of the SF-12 Form, is to adjust the tax value duplicate of the district. The actual assessed valuation of the Cincinnati School District is \$1,989,230,760. The average assessed value to true value for all those districts which went through re-appraisal in the year prior to the enactment of the statute is 30.1%. Consequently, that percentage was used as an adjustment base. The Cincinnati ratio of assessed valuation to true value was 29.6%. Therefore, an equalization calculation was made by taking a ratio of 30.1% divided by 29.6%, and multiplying the product by the actual assessed valuation of the school district to arrive at an equalized assessed valuation. Thus, for the purpose of calculating its basic support, the

⁵ Mr. Heimerdinger has been Clerk-Treasurer of the Cincinnati Board of Education since 1963. He was Assistant Clerk-Treasurer from 1939-1963. As Clerk-Treasurer, Mr. Heimerdinger is the fiscal officer responsible for all of the revenue derived by the Board from all sources. He is thus familiar with the operation of Am. Sub. SB 170.

school district is assigned a valuation greater than the valuation on which it actually collects taxes. (Tr. 1725-1726).

(9) Line 5 is a similar adjustment applied to the millage or school tax rates of the district. The Cincinnati school district's actual millage rate for 1975-76 was 25.94. But for the purpose of calculating basic state aid, the rate of 24.95 mills, the "equalized" millage, is used rather than the actual levy of 25.94 mills. "Equalized" millage is a statistically contrived figure, as is "equalized" valuation. "Equalized" millage is a rate which, when applied to the "equalized" valuation, would generate the same tax revenue as the district realizes from its actual assessed valuation and actual millage rate (assuming a 100% collection rate). Thus, it is clear that the system bases the amount of support on statistically contrived figures rather than the districts' actual assessed valuation rates and the millage rates. (Tr. 1727-1729, Plaintiffs' Exh. 41).

(10) Line 6 calculates the "equalized" valuation per pupil by dividing the total "equalized" valuation by the basic ADM. The figure thus derived is the computed "equalized" tax base per pupil in the Basic ADM. The "equalized" valuation per pupil in 1975-76 in Cincinnati was \$34,065. (Plaintiffs' Exh. 41, Tr. 1729-1730).

(11) Line 7, local yield per pupil per mill, is the equalized valuation per pupil on line 6 divided by 1,000. For Cincinnati in 1975 it was \$34.07. (Tr. 1730, Plaintiffs' Exh. 41).

(12) The foregoing exercise establishes the figures necessary to compute the entitlement of a school district under the Basic State Aid formula. (Tr. 1730).

(13) The State Basic Aid formula is a two-step calculation and proceeds as follows: The statute provides for a total yield of \$48 per pupil per mill from both local revenue and state support for the first 20 mills. The figure of \$48 is an arbitrary level of funding adopted by the Legislature for the first 20 mills, assuming that the system is fully funded. This

means that, if all of the districts received all of the local tax revenues which they are presumed by the formula to receive, each district in the state which levies 20 mills would be eligible to receive from local and state funds $20 \times \$48$ or \$960 per pupil, if the system were fully funded. The state would in that manner provide basic support to each school district for the first 20 mills by making up the difference between the district's line 7 local yield per pupil per mill and \$48. (Tr. 1730, Plaintiffs' Exh. 41).

(14) In the case of the Cincinnati School District for 1975-76, Exhibit 41 demonstrates that the computation worked as follows: $\$48.00 - \34.07 (Line 7 local yield per pupil per mill) = \$13.93 (the difference between the local yield per pupil per mill and \$48.00) $\times 60,716$ (the Basic ADM) $\times 20$ (mills). In order to receive state basic support, a school district must levy at least 20 mills and must have a local yield per pupil per mill of less than \$48.00. The result of that calculation for the Cincinnati School District is \$16,915,477.60. (Tr. 1730-1731, Plaintiffs' Exh. 41).

(15) It is clear from the foregoing, that the fewer pupils who are counted, the lower the district's support will be. Not only does a decrease in ADM mean a higher equalized valuation per pupil and a smaller difference between the equalized valuation per pupil and \$48, it also means that the ADM, the number by which the difference is multiplied, is reduced and, thus, the total number of dollars the school district receives is correspondingly reduced. (Tr. 1732-1733).

(16) The second calculation for State Basic Aid, shown on line 8(B), is the element of the state finance system called "reward for effort" or "bonus aid", wherein the state pays a bonus to and rewards school districts for their school operating millages above 20 and up to 30. For that quantum of funding the guarantee level is pegged at \$42 per pupil. Since the purpose of the Act is to pay extra moneys to districts based upon the number of mills they levy beyond 20, the

procedure is to deduct the district's local yield per pupil per mill from \$42 and multiply that difference by the Basic ADM and finally by the "equalized" millage in excess of 20 up to 30. (Tr. 1734-1735).

(17) The "reward for effort" calculation for the Cincinnati School District is $\$42.00 - \$34.07 = \$7.93 \times 60,716 \times 4.95$ (equalized mills above 20). The total sum of the calculation on line 8(B) of Exhibit 41 is \$2,203,315.51. (Tr. 1737, Plaintiffs' Exh. 41).

(18) State Basic Aid for the Cincinnati School District if the system were fully funded would have been \$19,298,793.11, the total of line 8(A) and 8(B). (Tr. 1737, Plaintiffs' Exh. 41).

(19) The "reward for effort" feature of the system operates to the advantage of some districts and the disadvantage of other districts depending upon the level of their school operating millages. A district which is levying only 20 equalized mills receives no aid under line 8(B). Conversely, a district which is able to levy 30 mills, would receive additional funds under line 8(B). If the Cincinnati School District had been able to levy 30 "equalized" mills, its payment under line 8(B) would have been \$4,814,778, more than twice that which it received. (Tr. 1737).

(20) Line 9 of the SF-12 reflects the "adjustments" (also called rewards and penalties) which affect the school districts positively or negatively depending upon whether they are in compliance with the mandates contained in Section 3317.023 of the Ohio Revised Code pertaining (A) to a number of classroom teachers, (B) to training and experience of classroom teachers and (C) to the number of educational service personnel. Exhibit 41 shows that in 1975-76 the Cincinnati School District's teachers exceeded the average in experience level of all the teachers in the state and that the District received a premium under line 9(B) of \$389,863. Plaintiff's exhibit 310 shows, however, that for the year 1975-76, 385

school districts in Ohio suffered penalties and thus reductions in Basic Support as result of non-compliance with one or more of the mandates. That exhibit shows also that for the year 1976-77, 397 of the state's districts were penalized for non-compliance with one or more of the mandates. (Tr. 1738-1739, Plaintiffs' Exh. 41).

(21) Line 11 of the SF-12, called Basic State Aid, is the amount of Basic Aid the school district received in 1974-75 under the previous school financing law. Am. Sub. SB 170 provides that during 1975-76 a school district receives the amount which it received during 1974-75 plus 17% of the difference between that amount and what its 1975-76 basic state support would be under Senate Bill 170 if it were fully funded. This calculation yields a district's basic support for 1975-76. The figure for the Cincinnati School District was \$11,075,291.30. This allocation however was reduced to 96.961% in order to stay within the limits of the Legislature's appropriation for the biennium. This figure is the amount a district actually received in Basic Support for the year 1975-76. It appears on line 13 of the SF-12 form and for the Cincinnati District it was \$10,738,674.41. (Tr. 1739-1742, Plaintiffs' Exh. 41).

(22) Lines 14 through 20 of the SF-12 contain calculations for districts' Categorical Program Funds. The Cincinnati School District had 211.57 vocational units approved by the state for funding. For each such approved vocational unit, the district receives an amount of money equal to the salary which that unit's teacher would be paid if he were on the state's statutory minimum salary schedule. Fifteen percent of that amount is added for retirement and fringe benefits. The state then provides only \$4000 to cover all of the costs of educating all of the children in the unit exclusive of the teacher's salary allowance. These factors entitled the Cincinnati District to a total of \$3,153,696.62 in 1975-76 for its vocational education program. (Tr. 1742-1743, Plaintiffs' Exh. 41).

(23) Since the entire teacher salary schedule in the Cincinnati district, including that for vocational education teachers, is considerably higher than the state minimum salary schedule, the excess cost of each teacher's salary beyond the state subsidy creates an automatic deficit in each vocational education unit. (Tr. 1743).

(24) Payments to the districts for approved units of special education students are calculated in the same manner as the units for vocational education students (line 15 and 16). The identical automatic deficits are created by the salary allowances. (Tr. 1743-1744, Plaintiffs' Exh. 41).

(25) Line 17 represents the payment for extended services — to employ personnel beyond the school year. Line 18 represents the payment for approved transportation on the basis of mileage or the number of pupils transported. That payment is not related, however, to the wages of bus drivers. (Tr. 1745-1746, Plaintiffs' Exh. 41).

(26) It is clear from the foregoing that categorical funding is made in the form of flat grants to a district based upon the number of students included in each unit rather than upon the actual cost of the unit in any particular district. (Tr. 1746-1747).

(27) The final type of categorical funding, which is not a flat grant, is called Disadvantaged Pupil Impact Aid. The statute establishes a formula for the calculation of that aid, under which the amount which a district receives is related to the percentage of the districts' students who receive Aid For Dependent Children (ADC) benefits. Any district in which fewer than 10% of the students (but at least 600) receive ADC payments receives \$7.50 per pupil for the number of pupils in the total ADM. At the top of the range, districts in which ADC recipients constitute 47½% or more of the ADM receive \$71.50 per pupil. For 1975-76 the Cincinnati district's percentage of ADC students fell into the category of 31½% to 34½% and thus it received \$47.50 per student and a total

of \$2,896,494.34 in impact aid. (Tr. 1746-1748, Plaintiffs' Exh. 41).

(28) In 1975-76 the Cincinnati District received a total of \$13,162,341.00 in Categorical Program Funding. Combining that with its Basic State Support in the amount of \$10,738,674.00, the district received a total of \$23,901,015 under the state funding formula in the year 1975-76. (Tr. 1749-1750, Plaintiffs' Exh. 41).

PLAINTIFF EXH. NO. 71

OHIO DEPARTMENT OF EDUCATION-DIVISION OF SCHOOL FINANCE
FORM SF-12 FISCAL YEAR 1975-76 REVISED CALCULATION (AM.SUB.S.O.8.1701)
HUN DATE:09/08/76

CINCINNATI CITY S.O.C. HAMILTON COUNTY

A. BASIC PROGRAM SUPPORT:

1.	5,848	KINDERGARTEN AUM
2.	57,791	GRADES 1-12 (EXCLUDES FTE ON LINE 14. ADM ON LINE 16 AND 75% OF JOINT VOCATIONAL AND CONTRACT AUM)
3.	60,716	BASIC ADM (ONE-HALF LINE 1 PLUS LINE 2)
4.	2,068.300.859	VALUATION (REAL VALUE EQUALIZED TO 30.1%)
5.	24.95	ACTUAL ASSESSED VALUATION * 1,989.230.760)
6.	34.065	EQUALIZED MILLAGE RATE (NOT LESS THAN 20)
7.	34.07	EQUALIZED VALUATION PER PUPIL (LINE 4 / LINE 31 LOCAL YIELD PER PUPIL PER MILL (LINE 6 / 1000))
8.	STATE BASIC AID (SECTION 3317.022) I	
(A)	(548.00 MINUS LINE 7) X LINE 3 X 20.00 *	16,915,477.60
(B)	(542.00 MINUS LINE 7) X LINE 3 X 4.95 *	2,383,315.51
	TOTAL	19,298,793.11

9. ADJUSTMENTS (SECTION 3317.023) I

- (A) NUMBER OF CLASSROOM TEACHERS 389,863.50
- (B) TRAINING AND EXPERIENCE OF CLASSROOM TEACHERS
- (C) EDUCATIONAL SERVICE PERSONNEL
- (D) COUNTY BOARD OF EDUCATION DEDUCTION (SEE LINE 23 BELOW)

10. BASIC STATE SUPPORT (LINE 8 PLUS LINE 9)

11. BASIC STATE AID (FY 1975) 9,311,059.86

12. FY 1977 ENTITLEMENT (LINE 10 MINUS LINE 11)
X .17 * LINE 11) 11,075,251.30

13. BASIC SUPPORT (LARGER OF LINE 11 AND LINE 12) X 96.961% 10,738,674.41

b. CATEGORICAL PROGRAM FUNDING:

14. APPROVED VOCATIONAL UNITS: 211.571 FTE 3,510.92
(A) SALARY ALLOWANCE * 15% * 34000 3,910,468.40
(INCLUDES PROPRIETARY AUM OF X \$1,003.87)
OR

(B) LINE 13 / LINE 3) X 105% X FTE 652,015.24

(C) LARGER OF LINE 14A OR 14B X 99.471% 3,153,696.62

15. APPROVED GIFTED CHILD STUDY, OCCUPATIONAL OR PHYSICAL THERAPY, SPEECH AND HEARING, SUPERVISORS AND COORDINATORS OF SPECIAL EDUCATION UNITS: 49.00
SALARY ALLOWANCE * 15% * 58701 X 97.601% 620,406.30

16. APPROVED DBECN AND EMR UNITS:

- (A) SALARY ALLOWANCE * 15% * 54540 4,436,150.16
DBECN UNITS 126.30 DBECN AUM 958
EMR UNITS 155.00 EMR AUM 2,053
OR
- (B) (LINE 13 / LINE 3) X 105% X SPEC. AUM 559,174.79

(C) LARGER OF LINE 16A OR 16B X 97.601% 4,329,726.92

17. APPROVED EXTENDED SERVICE X 96.961% 211,311.30

18. APPROVED TRANSPORTATION X 95.963% 1,950,705.54

19. DISADVANTAGED PUPIL IMPACT AID X 93.948% 2,896,494.35
TOTAL CATEGORIAL PROGRAM FUNDING (SUM OF LINES 14C, 15,
16C, 17, 18 ANU 19) 13,162,341.03

21. LINE 13 PLUS LINE 20 23,901,015.44

22. OTHER GUARANTEES (SPECIFY) * 0.00
A. REAPPRAISAL (SECTION 3317.04)
B. CONSOLIDATION (SECTION 3317.04)23. TOTAL STATE SUPPORT (LARGER OF LINE 21 OR 22)
MINUS LINE 9D) \$23,901,015.44

CINCINNATI CITY S.O.D. HAMILTON COUNTY
JVS AND CONTRACT AUM EXCLUDED FROM CALCULATION 8
TOTAL AUM AS REPORTED ON SF-2 67,831
FORMULA DISTRICT

**V. EFFECT OF STATE FUNDING FORMULA UPON
THE CINCINNATI SCHOOL DISTRICT**

(1) When the supplemental appropriation of \$60.00 per pupil, which was disbursed to all of the districts in the state participating in the foundation program in 1974-75, is added to the regular state foundation payments received by Cincinnati that year, the Cincinnati District received more in total state funding during 1974-75, the last year of the prior system, than it received in 1975-76, the first year of the present system. The total state support the district received in 1974-75 was \$23,969,827, as compared to the \$23,901,015 it received in 1975-76. (Plaintiffs' Exh. 47).⁶

(2) Cincinnati School District's Basic Program Support, \$10,738,674 in 1975-76, was reduced to \$10,023,012 in 1976-77, notwithstanding the fact that the formula's phase-in percentage increased from 17% to 26%. This occurred because the district's property was reappraised and its millage rate was automatically rolled back correspondingly from 25.94 mills to 24.06 mills. The increased valuation (from which the district received no additional local revenue because of the rollback), coupled with a decline in ADM, pushed the valuation per pupil upward. This reduced the difference between the local yield per pupil per mill and the guarantee levels of \$48 and \$42 for both calculations under line 8. At the same time, the lower equalized millage rate resulting from the rollback reduced the number of mills in excess of 20 upon which the district's "reward for effort" (line 8B Basic Support) was calculated. (Tr. 1752-1753, Plaintiffs' Exh. 41).

(3) The precise calculations of the Cincinnati School district's Basic Support for 1975 and 1976, assuming full funding, were as follows:

⁶ Carl H. Heimerdinger, Clerk-Treasurer of the Cincinnati Board of Education testified concerning the effect of the state funding formula upon the Cincinnati School District.

1975-76: $\$48.00 - 34.07 = \$13.93 \times 60,716 \times 20 = \$16,915,477$
 (line 8A)

1975-76: $\$42.00 - 34.07 = \$7.93 \times 60,716 \times 4.95 = \$2,203,315$
 (line 8B)

1976-77: $\$48.00 - 38.78 = \$9.22 \times 58,182 \times 20 = \$10,728,945$
 (line 8A)

1976-77: $\$42.00 - 38.78 = \$3.22 \times 58,183 \times 4.06 = \$760,638$
 (line 8B)

Total Basic Support (if fully funded) 1975-76 \$19,298,793

Total Basic Support (if fully funded) 1976-77 \$11,489,583
 (Tr. 1753-1754, Plaintiffs' Exh. 41).

(4) But in continuing the calculation for the Cincinnati District for 1975-76, the application of the 17% phase-in percentage netted the district Basic Support of only \$10,738,674. In 1976-77, the application of the increased phase-in percentage of 26% netted the Cincinnati school District Basic Support of \$10,023,012. (A reduction from the prior year). (Tr. 1756, Plaintiffs' Exh. 42).

(5) The Cincinnati school district received \$14,540,000 in categorical aid in 1976-77 (as compared to \$13,162,000 in 1975-76) as the result of an increase in the number of approved educational units from 211.57 to 239.00. (Tr. 1755-1756). Because of this increase in categorical aid, Cincinnati's total state support (both basic and categorical) was \$24,536,201 in 1976-77 as compered to \$23,901,015 in 1975-76. As the evidence shows, however, the reduction in basic program support which commenced in 1975-76 will become aggravated in the years ahead until the district receives no basic support. (Tr. 1755, Plaintiffs' Exh. 42).

(6) For the purpose of demonstrating the future effect of the present system upon the Cincinnati District and other

similar districts having relatively high valuations and relatively low millages, Mr. Heimerdinger projected the application of the formula to the Cincinnati School District for the years 1977-78, 1978-79, 1979-80 and 1980-81. He assumed the formula to be fully funded for all of those years and made certain conservative assumptions concerning the district during that four year period. Those assumptions, all of which are consistent with the district's historical experience, are as follows:

(a) Utilizing the pupil population projections of the Cincinnati School District's administrative research branch, the number of Full Time Equivalent Pupils who will enroll in the district's schools during the school years 1977-78 through 1980-81 is estimated to be as follows:

1977-78 – 59,743;

1978-79 – 56,547;

1979-80 – 53,539;

1980-81 – 50,929.

(b) Local tax revenues for the years following 1977 are computed at a $\frac{1}{2}\%$ net annual increase (1- $\frac{1}{2}\%$ increase reduced by 1% for rents and non-collections).

(c) Categorical units will increase by 5 units per year through 1978-79, and those units will remain constant thereafter.

(d) There will be no increase in school millage either through the passage of additional levies or through any equalization adjustment. (Tr. 1757-1761).

(7) Based upon the foregoing assumptions, the present state school finance system, if fully funded, would yield the Cincinnati School District the following revenues in the years 1977-78 through 1980-81:

School Year	Basic State Support	Categorical Aid	Total State Support
1977-78	8,295,185	15,012,792	23,307,977
1978-79	5,479,085	15,027,806	20,506,891
1979-80	2,242,733	15,288,301	17,531,034
1980-81	- 0 -	15,414,206	15,414,206

(Plaintiffs' Exhibit 47)

(8) The total state support per FTE pupil (total state support divided by the number of full-time equivalent pupils) would decline as follows:

1977-78 - \$390.14;
 1978-79 - \$362.65;
 1979-80 - \$327.44;
 1980-81 - \$302.66

(Plaintiffs' Exhibit 47)

(9) Further, during the same period of time, Basic State Support per pupil (as distinguished from Categorical Aid which is targeted to specific pupils) would decline as follows:

1977-78 - \$138.85;
 1978-79 - \$ 96.89;
 1979-80 - \$ 41.89;
 1980-81 - - 0 -

(Plaintiffs' Exhibit 47)

(10) The Cincinnati School District received \$199.41 in Basic State Support per FTE pupil in 1974-75 and \$165.45 in 1975-1976. Therefore, the Cincinnati School District's Basic Support per FTE pupil dropped by \$33.96 the first year of the operation of Amended Substitute Senate Bill 170 and an additional \$7.10 the second year of its operations from 1974-75 (the final year of the prior system.) The Cincinnati School District

will receive substantially less Basic State Support each year until 1980-81 when it will receive no Basic Support at all, even if the system were to be fully funded. (Plaintiffs' Exh. 47).

(11) It is also evident that the number of dollars which the district may reasonably expect to receive from local tax revenues during the years 1978 through 1981 is estimated to increase very slightly from \$54,724,000 to \$55,548,000. If those figures are added to the District's inevitably decreasing total state support, it is clear that the Cincinnati School District's total revenue from total state support and total local taxes would decline as follows during the four year period:

1977-78

54,724,000 (local taxes)	23,307,977 (state support)	78,031,977 (total)
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1978-79

54,998,000 (local taxes)	20,506,891 (state support)	75,504,891 (total)
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1978-80

55,272,000 (local taxes)	17,531,034 (state support)	72,803,034 (total)
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1980-81

55,548,000 (local taxes)	15,414,206 (state support)	70,962,206 (total)
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(Plaintiffs' Exhibit 47)

(12) By converting the district's total state support to support per FTE pupil, and considering the district's anticipated decline in pupil population, it is clear that the district would receive only a slight increase in the number of dollars of combined total state and local support per FTE pupil during the

period from 1977-78 through 1980-81, if the system were fully funded. This slight increase would be the result of slightly increasing local tax revenues.

School Year	Total State Support Per FTE Pupil	Local Taxes Per FTE Pupil	Total State & Local Support Per FTE Pupil
1974-75	359.25	764.92	1124.17
1975-76	368.23	826.41	1194.64
1976-77	388.07	860.31	1248.38
*1977-78	390.14	915.99	1306.13
*1978-79	362.65	972.60	1335.25
*1979-80	327.44	1032.37	1359.81
*1980-81	302.66	1090.69	1393.35

*Assumes full funding

(Plaintiffs' Exhibit 47)

(13) The Cincinnati District projects that the per pupil cost of maintaining the current level of educational programs in the district will rise from \$1526.55 in 1977-78 to \$2119.52 in 1980-81. (based on the average cost per pupil increase trend of the past five years) (Tr. 1777-1779, Plaintiffs' Exh. 47).

(14) The deficits reasonably expected to exist between the number of dollars the Cincinnati School District would receive in total state and local support per FTE pupil (if the system were fully funded,) and the total projected expenditure per FTE pupil to maintain existing programs during the years 1977-78 through 1980-81 are represented on Plaintiffs' Exhibit 47:

School Year	Total State & Local Support Per FTE Pupil	Total Expenditure (Projected Requirement) Per FTE Pupil
1974-75	1124.17	1075.15
1975-76	1194.64	1267.02
1976-77	1248.38	1368.37
*1977-78	1306.13	1526.55
*1978-79	1335.25	1703.02
*1979-80	1359.81	1899.89
*1980-81	1393.35	2119.52

*Assumes full funding.

(15) Based upon the foregoing, the aggregate amount by which projected expenditures would exceed total state and local support in the year 1980-81 would be \$36,974,454. (Tr. 1783, 1784).

(16) Ohio's school finance formula even if it were fully funded in 1977-78 and thereafter, would reduce the level of Basic Program Support received by the Cincinnati School District each year until the district receives no Basic Support in 1980-81. Making the same conservative assumptions regarding the number of pupils and the amount of tax valuation as previously stated in number 6 above, the district's state basic support will be as follows:

1977-78 (Full Funding)

$$\begin{aligned}
 \$48.00 - \$41.02 &= \$6.98 \times 55,685 \times 20 = \$7,773,626 \\
 \$42.00 - \$41.02 &= \$.98 \times 55,685 \times 4.06 = \$ 221,559 \\
 &\hline \\
 &\quad \$7,995,185
 \end{aligned}$$

(Tr. 1762-1763, 1816, Plaintiffs' Sub. Exh. 43).

1978-1979 (Full Funding)

\$48.00 - \$42.85 = \$5.15 x 53,195 x 20 =	\$5,479,085
\$42.00 - \$42.85 = \$ 0 x	= \$ 0
<hr/>	
\$5,479,085	

(Tr. 1769-1770, 1817, Plaintiffs' Sub. Exh. 44).

1978-80 (Full Funding)

\$48.00 - \$45.76 = \$2.24 x 50,061 x 20 =	\$2,242,733
\$42.00 - \$45.76 = \$ 0	= \$ 0
<hr/>	
\$2,242,733	

(Tr. 1772, 1818, Plaintiffs' Sub. Exh. 45).

1980-81 (Full Funding)

\$48.00 - \$48.87 = \$ 0 x 47,100 x 20 =	\$ 0
\$42.00 - \$48.87 = \$ 0 x	= \$ 0

(Tr. 1775, 1818, Plaintiffs' Sub. Exh. 46).

(17) The Cincinnati School District's ineligibility for Basic State Support by the 1980-81 school year would result from a continuing decline in enrollment and a very slight increase in property valuation. (Tr. 1772). Thus, the present system established by the General Assembly for financing public elementary and secondary education operates in such a manner as to place certain school districts entirely outside the Basic Support calculation. This occurs solely by reason of natural and inevitable phenomena utterly beyond the district's control and without any regard to whether, if deprived of Basic Support, the districts have the wherewithal (through local property taxation) to finance their schools at any level — or at all.

(18) As the testimony of Mr. Heimerdinger and the attendant exhibits, all of which are uncontested on the record,

demonstrate, there is no way in which the Cincinnati School District can long survive under the present system for financing public elementary and secondary education.

VI. LEVEL OF FUNDING IN GENERAL**(A) Distribution Of Districts By Total State And Local Support Per FTE Pupil**

(1) Very great disparities exist among the school districts in this state in total sums of basic aid plus local support (money generated through property taxation) per pupil and in total state aid (basic and categorical) plus local support per pupil.

(2) With the exception of Disadvantaged Pupil Impact Aid, categorical aid may not be used to purchase educational services for any students except those in the units for which it is targeted. Thus, in order to consider the disparities which exist in the financial resources which the districts have available for the education of regular students, the sum of basic aid plus local support per pupil which the districts have must be noted.

(3) The range in sums of basic aid plus local support among Ohio's 617 districts in 1975-76 was from \$604 per pupil to \$3537 per pupil, almost 6 to 1. The range in the total state aid plus local support was from \$722 per pupil to \$3563 per pupil, 4.9 to 1. (Plaintiffs' Exhs. 245-256).

(4) The Cincinnati City School District realized only \$960.44 per pupil in state basic aid plus local support with which to purchase services for its regular students in 1976. The total of \$1163 per pupil in total state aid plus local support which it received included the sum of \$202.79 per pupil in categorical aid, most of which was restricted to the pupils in the categorical units. By contrast, the Princeton City School District in Hamilton County received \$1879 per pupil in total state and local support in 1976 and it had \$1769 per pupil in basic aid plus local support. Princeton's financial resources per

pupil were therefore almost twice those of Cincinnati. (Plaintiffs' Exh. 217A).

(5) Thus, a disparity of approximately 2 to 1 in the sum of basic aid plus local support exists between two school districts in the same county and metropolitan region. That phenomenon is not peculiar to Cincinnati and Princeton. It exists throughout the state. In Cuyahoga County, Beachwood City had \$2366 in basic aid plus local support per pupil compared to Cleveland's \$1067. In Trumbull County, Lordstown had \$3460 compared to Warren's \$962. In Lucas County, Ottawa Hills had \$1560 compared to Toledo's \$856. (Plaintiffs' Exh. 245-256).

(6) Dividing the pupils in Ohio into decile groupings of approximately 220,000 pupils per decile, and excluding the 62 districts ranked highest and the 62 districts ranked lowest in total state plus local resources per pupil, the districts in the 90th percentile had an average of \$1460 per pupil in total state plus local revenues; those in the 10th percentile had average resources of only \$776 per pupil. That is a ratio of 1.9 to 1. (Plaintiffs' Exh. 180, Tr. 3301).

(7) In 1975-76, 22,622.5 full-time enrolled pupils (1.09% of all those in the state) attended school in the 12 districts which received less than \$750 per pupil in total state plus local support. (Plaintiffs' Exh. 181).

(8) In 1975-76, 100,812.5 (4.5%) attended school in the 52 districts which received less than \$800 in total state and local support. (Plaintiffs' Exh. 181).

(9) In 1975-76, 270,209.5 (12.2%) attended school in the 133 districts which received less than \$850 in total state and local support. (Plaintiffs' Exh. 181).

(10) In 1975-76, 481,894.5 (21.8%) attended school in the 228 districts which received less than \$900 in total state and local support. (Plaintiffs' Exh. 181).

(11) In 1975-76, 662,706 (30%) attended school in the 305 districts which received less than \$950 in total state and local support. (Plaintiffs' Exh. 181).

(12) In 1975-76, 984,823 (40.5%) attended school in the 377 districts which received less than \$1,000 in total state and local support. (Plaintiffs' Exh. 181).

(13) In 1975-76, 1,073,283.5 (48.6%) attended school in the 435 districts which received less than \$1,050 in total state and local support. (Plaintiffs' Exh. 181).

(14) In 1975-76, 1,386,489.5 (62.8%) attended school in the 483 districts which received less than \$1,100 in total state and local support. (Plaintiffs' Exh. 181).

(15) In 1975-76, 1,481,069 (67%) attended school in the 509 districts which received less than \$1150 in total state and local support. (Plaintiffs' Exh. 181).

(16) In 1975-76, 1,679,856.5 (76.1%) attended school in the 532 districts which received less than \$1200 in total state and local support. (Plaintiffs' Exh. 181).

(17) In 1975-76, 1,805,484 (81.8%) attended school in the 551 districts which received less than \$1250 in total state and local support. (Plaintiffs' Exh. 181).

(18) In 1975-76, 2,023,015.5 (91.7%) attended school in the 569 districts which received less than \$1300 in total state and local support. (Plaintiffs' Exh. 181).

(19) Thus, in 1975-76, only 181,171.5 (8.3%) of Ohio's school children attended school in the 48 districts which received more than \$1300 in total state and local support. (Plaintiffs' Exh. 181).

(20) In 1975-76, only 2% of the state's students attended school in the 23 districts which received more than \$1500 in total state and local support. (Plaintiffs' Exh. 181).

(21) Only 1.2% attended school in the 14 districts which received more than \$1700 in total state and local support in 1975-76. (Plaintiffs' Exh. 181).

(22) Thus, not only are there very substantial disparities among Ohio's school districts in total state plus local resources for education, but the overwhelming majority of pupils attend school in those districts whose total educational resources were less than \$1100 per pupil in 1975-76. (Plaintiffs' Exh. 181).

(B) Comparison Of Ohio's Funding Level With Those Of Comparable States

(1) The 1975 Digest of Educational Statistics published by the United States Department of Health, Education and Welfare shows that in 1974-75 Ohio's support per pupil for public education was substantially lower than that of comparable northern, industrial states. That conclusion is apparent from the following table:

State	Amount By Which Each State's Support Level Exceeds Ohio's	
	Amount of Support Per Pupil	
Ohio	\$1,119.00	
Illinois	1,488.00	\$369.00
Massachusetts	1,420.00	301.00
Minnesota	1,484.00	365.00
Michigan	1,467.00	347.00
New Jersey	1,718.00	599.00
New York	2,216.00	1,097.00
Pennsylvania	1,450.00	331.00

(Tr. 3125-3127).

(2) In 1975 Ohio's support per pupil was below the national average. (Tr. 3128).

(3) If Ohio were to provide \$1700 to \$1800 per pupil in 1977, it would not exceed the level at which the comparable northern, industrial states are now financing elementary and secondary education. (Tr. 4856).

(4) In 1974 Ohio ranked 50th among the states in per capita percentage of personal income expended for all education. (Tr. 3210).

(C) Sources And Levels Of Revenue For Financing Elementary And Secondary Education In Ohio

(1) In the school year 1975-76 all of the school districts in Ohio received an aggregate of \$2,674,086,000 in state and local revenue. (Tr. 4681).

(2) During that year the Ohio school districts received a total of \$174,213,976 in federal aid. (Defendants' Exh. I-B-10).

(3) Local tax revenue⁷ constituted 62.8% of all state-local funds. (Tr. 4681).

(4) The percentage of Ohio's general revenue fund appropriated for elementary and secondary education has declined from 37.2% of the total, in the 1965-67 biennium, to 32.2% in the 1973-75 biennium and is estimated to decline further to 29.9% in the 1975-77 biennium. (Plaintiffs' Exh. 260, p. 5, Tr. 3693).

(5) As disclosed by the graph on page 2 of Plaintiffs' Exhibit 260, the total in state appropriations (excluding auxiliary services) plus local revenue for the operation of all public schools in Ohio rose from \$1,985,600,000 in 1972 to \$2,639,500,000 in 1976 (estimated), an increase of 30%.

⁷ The amount representing what is called the property tax rollback is counted as local revenue for the purpose of computing the percentage of the state-local funds because it is money derived from the levy of millage on local tax duplicates which the school districts would receive were it not for the rollback. (Tr. 4672-4678).

(6) As is also disclosed by plaintiffs' Exhibit 260, on page iv, during the years 1971 through 1976 the consumer price index increased by 47%. During that same period the state minimum teacher salary schedule increased by 86.6%,⁸ the cost of hospitalization and major medical care increased by 111.6%, and the cost of purchasing numerous other items necessarily purchased by school districts increased from 40% to 316%.

(7) Thus, during the period from 1971 through 1976 the increases in the incomes of Ohio school districts fell far short of the escalating operating costs which the districts incurred as a result of the spiraling inflation. (Tr. 3660).

(8) It is therefore true that the general funding level for the public schools in this state is substantially lower than is necessary to enable most of the school districts to meet their operating costs.

(9) Such an unacceptably low level of financing schools is irreconcilable with the wealth of Ohio and with the taxpaying capacity of its citizens. (See Finding V(B)(4) that Ohio ranked last among all the states in the percentage of per capita income devoted to public education).

(10) The level of funding public education could be raised substantially without straining the taxpaying capacity of the people of Ohio. (Tr. 3225). Ohio has a very low income tax rate as compared to those of most states which levy income taxes. (Tr. 3224).

(11) The General Assembly has thus failed to marshall the available tax revenues necessary to finance public elementary and secondary education at even minimal levels throughout the state. (See Findings VII(A)(E)(F)(G) and (L)).

⁸ As plaintiffs' Exhibit 260 discloses on p. 4, disbursements for salaries plus retirement and other fringe benefits represent 83% of the current operating expenditures of Ohio's school districts.

VII. CONDITIONS IN OHIO SCHOOL DISTRICTS

(A) Inability of Schools To Compy With State Minimum Standards

(1) Pursuant to O.R.C. § 3301.07, which provides that the State Board of Education shall prescribe minimum standards to be applied to all schools "for the purpose of requiring a general education of high quality", the Board has promulgated separate minimum standards for high schools, junior high schools and elementary schools. The standards for high schools and junior high schools were made effective July, 1968. Those for elementary schools were made effective July, 1970.

(2) The publication of the Ohio Department of Education which contains the standards for high schools (Plaintiffs' Exh. 23) states that those standards are a revision of the original minimum standards which were made effective in 1957. The publication which contains the junior high school standards (Plaintiffs' Exh. 22) refers to no prior standards. Presumably, the junior high school standards came into existence in 1968. The publication containing the elementary school standards (Plaintiffs' Exh. 21) raises a similar presumption that there were no elementary school standards in effect prior to 1970.

(3) Both the publication containing the junior high school standards (Plaintiffs' Exh. 22) and that containing the high school standards (Plaintiffs' Exh. 23) include introductory statements that "The eight basic standards in the publication are consistent with the provisions of Section 3301.07 of the Revised Code of Ohio and are in keeping with those generally accepted practices which are considered necessary to sound educational practices." The publications also state that the standards "state in definite terms the minimum standards which each school must meet for chartering purposes . . ."

(4) The junior high school and high school standards establish minimum requirements relating to organization and administration, curriculum and instruction, pupil services, staff

personnel, instructional material and equipment, school and community relations, evaluation and research and physical facilities. The minimum standards for junior high schools and high schools are similar and in many instances identical. Both sets of standards provide, for instance, that the pupil-teacher ratio shall not exceed 27:1.

(5) The minimum standards for elementary schools, cover the same subjects as do those for junior high schools and high schools, but they establish different criteria.

(6) There are 4,263 school buildings in Ohio. Plaintiffs' Exhibits 1001 to 2848 are the reports of inspection of Ohio schools made by the State Department of Education to determine each building's compliance or non-compliance with state minimum standards during the years 1972 through 1976. During that period of time fewer than half of the schools in the State (1869) were inspected for compliance. (Tr. 6059-6060).

(7) Those inspection reports disclose that almost 97% of the 1869 schools which were inspected were found not to be in compliance with one or more separate standards. (Tr. 3119).

(8) Specifically, the reports indicated the following lack of compliance with various state standards: 53% of the buildings were found to be deficient in curriculum and instruction; 63% in staff and personnel; 14% in pupil-teacher ratios; 29% in libraries; 54% in textbooks; 34% in classroom facilities; 45% in library facilities; 47% in art, music and industrial education facilities; 31% in physical education facilities. (Plaintiffs' Exh. 165).

(9) The evidence demonstrates that non-compliance with minimum standards is widespread and uniformly pervasive in certain areas of the state. For example, Plaintiffs' Exhibit 1861-A contains the following statement from Virginia H. Kunkel to Martin Essex: "This is a sad educational situation with inspection evidencing a withheld status for all the schools in Highland County."

(10) The total number of deficiencies in significant categories in all of the schools which were inspected was 7797. (Tr. 3119).

(11) If the schools which have not been inspected are as deficient as are those which have been inspected, an assumption which is reasonable, the total number of instances of non-compliance with state minimum standards that exist among all of the state's 4263 schools is between 16,000 and 18,000 in the aggregate.⁹ (Tr. 3121).

(12) Every single elementary school which was inspected was found to be in violation of at least three minimum standards. Only 18% of the elementary schools were found not to be in violation of a physical facility requirement. Only 24 of the 986 secondary schools were found not to be in violation of the standards. These facts were acknowledged by State Assistant Superintendent of Public Instruction G. Robert Bowers. (Tr. 6712).

(13) The condition of widespread non-compliance with state minimum standards by Ohio schools demonstrates that most of the schools in the state are not able to conform to the "sound educational practices" standard expressed by the Department of Education and thus are not technically eligible for chartering.

(14) Thus, based upon the Department of Education's reports, the schools in Ohio are not in compliance with the State Board's minimum standards and must be regarded as submarginal by the State's own standards. It is beyond dispute that the minimum standards represent the lowest level at which instructional services should be provided in Ohio. Wil-

⁹ This conclusion was made by Robert H. Wessel, Professor of Economy and Administration at the University of Cincinnati. Dr. Wessel stated that the sample of 1,800 schools out of 4,200 schools produced reliable results as it was a very large sample as well as a representative sample. Thus, assuming that the same proportion of deficiencies which existed in the sample schools also existed in the other schools, there are a total of 16,000 to 18,000 deficiencies. (Tr. 3121).

liam A. Harrison, Staff Director to the General Assembly's Education Review Committee, a witness called by the defendants, conceded that this is so. (Tr. 4956).

(15) The significance of the evidence of non-compliance by schools with state minimum standards is that the General Assembly has established a system of common schools throughout the state in which the overwhelming majority of the schools are substandard as measured by the state's own criteria.

(B) Closing Districts (1976)

(1) In 1976, seventeen of Ohio's school districts were forced to apply to the State Auditor for closing audits¹⁰ due to acute shortages of funds.¹¹

¹⁰ Those applications were made pursuant to § 3313.483 O.R.C. which provides:

A board of education, upon the adoption of a resolution stating that such board may be financially unable to open on the day or to remain open for instruction on all days set forth in its adopted school calendar and maintain minimum standards as may be required by the state board of education, shall request the auditor of state to determine whether such situation exists. If the auditor of state finds that the board of education has attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it except those authorized by section 5705.21 of the Revised Code, he shall certify that finding to the superintendent of public instruction and shall certify the date on which the district will have remaining only such moneys as are necessary for maintaining the district while the education program is suspended and the date on which the district, by utilizing all lawful revenue sources for securing such moneys, will have available sufficient moneys to open or reopen the instruction program meeting the required minimum standards.

Upon receipt of such certificate, the superintendent of public instruction may authorize such school district to delay the opening of its schools or close schools on or after the certified date on which the district will cease to have sufficient funds and order such district to open or reopen on the certified date on which it will again have sufficient funds available. The order to open or reopen may be extended by the superintendent of public instruction for good cause shown.

No board of education may delay the opening of its schools

(2) The districts which made such applications were Blanchester Local in Clinton County, Wayne Local in Warren County, Toledo City in Lucas County, Plain Local in Franklin County, North Union Local in Union County, Groveport Madison in Franklin County, Colonel Crawford Local in Crawford County, Jackson-Milton Local in Mahoning County, Union Scioto Local in Ross County, Ridgedale Local in Marion County, Grand Valley Local in Astabula County, Ripley-Union-Lewis in Brown County, Seneca East Local in Seneca County, Ontario Local in Richland County, Bucyrus City in Crawford County, Bellair City in Belmont County and Federal Hocking Local in Athens County.

(3) Seven "audit" districts actually closed their schools for varying periods of time. Toledo City closed on December 3, 1976. (Tr. 565). If the Toledo City district had completed the school year without closing, its estimated deficit would have been \$3,454,520.28 (Plaintiffs' Exh. 1). North Union Local closed on November 8, 1976. (Tr. 699). If the North Union Local district had completed the school year without closing its estimated deficit would have been \$194,980.59 (Plaintiffs' Exh. 3). Groveport Madison Local closed on November 3, 1976. (Tr. 719). If the Groveport Madison Local district had completed its school year without closing, its estimated deficit would have been \$714,644.49 (Plaintiffs' Exh. 4). Colonel Crawford Local district closed on November 24, 1976. (Tr. 805). If Colonel Crawford Local district had completed its school year without closing, its estimated deficit would have been \$96,748.02. (Plaintiffs' Exh. 5). Jackson-Milton Local district closed on November 11, 1976. (Tr. 829). If Jackson-Milton Local had completed its school

or close its schools for financial reasons unless so authorized by the superintendent of public instruction.

¹¹ Former State Superintendent of Public Instruction Martin Essex acknowledged that all of the school districts which closed were brought to that position because they simply did not have enough money to keep their schools open. (Tr. 241-42).

year without closing, its estimated deficit would have been \$210,938.33. (Plaintiffs' Exh. 6). Grand Valley Local closed on November 29, 1976. (Tr. 931). If Grand Valley Local had completed its school year without closing, its estimated deficit would have been \$55,464.54. (Plaintiffs' Exh. 9). Wayne Local District was to close on December 19, 1976, according to the testimony of Superintendent Swamberger on December 10, 1976. (Tr. 482).¹²

(4) The Benton-Carroll-Salem district closed November 24, 1976, without an audit because, although the district lacked funds to operate beyond that date, the Auditor refused to provide a closing audit based on his policy of not auditing a district for closing unless the district had two unsuccessful tax levies in that year prior to August 1.¹³ (Tr. 669, 671).

(5) As a result of the foregoing closings, 68,947 children were prevented from obtaining free public schooling on all the days of the 1976 school calendar. This number does not include the students in the Wayne Local and Benton-Carroll-Salem schools because their number does not appear in the record.

(6) Those districts which applied for closing audits in 1976 but did not close, avoided closing in a variety of ways.

(6.1) Blanchester Local district cancelled the Audit after a 2 mill levy passed.

(6.2) Plain Local district disregarded the auditor's state-

¹² Even though the State Auditor designated November 29, 1976 as the date for closing, the Wayne Local district was able to defer the closing until December 17 because employees agreed to defer receipt of their paychecks. (Tr. 474-5).

¹³ The Court judicially notices the policy adopted by Thomas F. Ferguson, Auditor of the State of Ohio and published in the Sept./Oct., 1975 and March/April 1975 issues of "The Auditor's Messenger". This policy was revised in 1977 and two unsuccessful levies are no longer required prior to an audit. May/June 1977 "Auditor's Messenger".

ment that the district would have no operating funds after December 10, 1976, and completed the school year. (Tr. 643, 649).

(6.3) Union Scioto Local district was scheduled to close December 3, 1976 but was able to avoid closing because it passed a levy on December 2 by 71 votes. (Tr. 877, 879).

(6.4) Ridgedale Local, which applied for an audit in August of 1976, passed a levy December 2, 1976 and was able to avoid closing. (Tr. 911).

(6.5) The Ripley-Union-Lewis district applied for an audit which was not completed because an emergency levy passed and the closing was avoided. (Tr. 966).

(6.6) The Seneca East Local district managed to avoid closing despite the Auditor's conclusion that the district would be without operating funds on December 23, 1976. (Tr. 1000).

(6.7) The Ontario Local district applied for an audit which was cancelled due to the repeal of a statute which had caused the district to sustain a penalty and thus incur a deficit. (Tr. 1034).

(6.8) The Bucyrus City district avoided closing because it received unanticipated receipts from personal property tax in the amount of \$120,000. (Tr. 1069). The district had a \$12,000 deficit nonetheless, but it was deemed advisable by the Auditor that it not close because the schools were recessed for Christmas vacation. (Tr. 1069, Plaintiffs' Exh. 11).

(6.9) The Federal Hocking Local district avoided closing by passing a levy at a special election in August. (Tr. 1114).

(6.10) The Bellair City district also avoided closing by passing a levy. (Tr. 1087-8).

(7) Those districts which avoided closing in 1976 by passing levies will not derive enough benefit from the levies

to avoid facing identical problems in 1977. (Tr. 967, 881, 1116-7, 1401, 1511-2).

(8) In many cases anticipated 1977 income from the levies had to be encumbered in 1976 in order to keep schools open and thus that income is unavailable for operating expenses in 1977. (Tr. 487, 650, 881, 967, 1014).

(9) Many of the districts have been forced to borrow from commercial banks and from bond retirement accounts, and have had to defer the payment of bills until the next school year. (Tr. 439, 786, 881, 1115, 1081, 498-9, 569, 650, 734-5, 763-4).

(10) The superintendents anticipate that the financial problems of their districts will become even worse in 1977 than they were in 1976, that the deficits will become larger and that their schools will have to be closed for longer periods in 1977 than they were in 1976. (Tr. 407, 487, 514, 541-2, 651-2, 674, 707-8, 541-2, 768, 844, 882, 940, 968, 1004, 1072, 1115-6, 1116-7).

(11) School closings place districts in deeper financial holes because they incur additional costs for unemployment compensation, interest and make-up days. (Tr. 534-6, 786, 813-4, 836-7, 839, 939-40, 823, 859-60).

(12) The additional cost to the Toledo City District in unemployment compensation alone as a result of the 1976 closing was \$1.5 million. (Tr. 534-6).

(C) Closing Districts (1977)

(1) According to information received by the plaintiffs from the Auditor of the State of Ohio, as of November 16, 1977, 51 school districts in Ohio were forced to apply to the State Auditor for closing audits in 1977 due to acute shortages of funds.

(2) The Auditor certified that 33 of the 51 school districts would have deficits if they completed the 1977 school

year and he computed the number of days each district would be required to close in order to avoid that deficit.

(2.1) Scioto Valley Local School District in Pike County would have a deficit of \$206,715.01 if it failed to close for 40 school days.

(2.2) Frontier Local School District in Washington County would have a deficit of \$29,379.94 if it failed to close for seven school days.

(2.3) Canton City School District in Stark County would have a deficit of \$259,691.08 if it failed to close for three school days.

(2.4) Newton Falls Exempted Village School District in Trumbull County would have a deficit of \$184,567.32 if it failed to close for 20 school days.

(2.5) New Carlisle-Bethel Local School District in Clark County would have a deficit of \$302,216.00 if it failed to close for 14 school days in 1977.

(2.6) Northwestern Local School District in Clark County would have a deficit of \$384,001.58 if it failed to close for 63 school days in 1977.

(2.7) Toledo City School District in Lucas County would have a deficit of \$9,812,802.85 if it failed to close for 44 school days in 1977.

(2.8) Monroeville Local School District in Huron County would have a deficit of \$220,942.88 if it failed to close for 84 school days in 1977.

(2.9) Eastern Local School District in Meigs County would have a deficit of \$23,280.64 if it failed to close for 9 school days in 1977.

(2.10) Greenville Local School District in Ashtabula County would have a deficit of \$216,971.52 if it failed to close for 16 school days in 1977.

(2.11) Indian Creek Local School District in Jefferson County would have a deficit of \$394,563.09 if it failed to close for 24 school days in 1977.

(2.12) New Richmond Exempted Village School District in Clermont County would have a deficit of \$258,210.39 if it failed to close for 21 school days in 1977.

(2.13) Southern Local School District in Meigs County would have a deficit of \$156,685.87 if it failed to close for 59 school days in 1977.

(2.14) Edison Local School District in Jefferson County would have a deficit of \$533,036.17 if it failed to close for 33 school days in 1977.

(2.15) Manchester Local School District in Summit County would have a deficit of \$72,066.36 if it failed to close for ten school days in 1977.

(2.16) Jackson Local School District in Stark County would have a deficit of \$446,528.98 if it failed to close for 26 school days.

(2.17) Seneca East Local School District in Seneca County would have a deficit of \$51,804.63 if it failed to close for 13 school days in 1977.

(2.18) McComb Local School District in Hancock County would have a deficit of \$146,188.17 if it failed to close for 33 school days in 1977.

(2.19) Licking Valley Local School District in Licking County would have a deficit of \$76,168.63 if it failed to close for 13 school days in 1977.

(2.20) Amherst Exempted Village School District in Lorain County would have a deficit of \$124,254.14 if it failed to close for ten school days in 1977.

(2.21) Scioto-Darby County School District in Franklin County would have a deficit of \$93,262.87 if it failed to close for six school days in 1977.

(2.22) Sylvania City School District in Lucas County would have a deficit of \$482,134.24 if it failed to close for 16 school days in 1977.

(2.23) James A. Garfield Local School District in Portage County would have a deficit of \$124,394.00 if it failed to close for 21 school days in 1977.

(2.24) Northwest Local School District in Hamilton County would have a deficit of \$644,322.15 if it failed to close for 15 school days in 1977.

(2.25) Perry Local School District in Allen County would have a deficit of \$12,897.57 if it failed to close for five school days in 1977.

(2.26) Allen East Local School District in Allen County would have a deficit of \$16,518.99 if it failed to close for five school days in 1977.

(2.27) Ashtabula Area County School District in Ashtabula County would have a deficit of \$366,010.70 if it failed to close for 17 school days in 1977.

(2.28) Nelsonville-York County School District in Athens County would have a deficit of \$262,918.49 if it failed to close for 48 school days in 1977.

(2.29) Cleveland City School District in Cuyahoga County would have a deficit of \$20,942,125.69 if it failed to close for 51 school days in 1977.

(2.30) Rootstown Local School District in Portage County would have a deficit of \$104,849.92 if it failed to close for 19 school days in 1977.

(2.31) Ottawa-Glandorf Local School District in Putnam County would have a deficit of \$54,997.38 if it failed to close for 12 school days in 1977.

(2.32) Blanchester Local School District in Clinton County would have a deficit of \$123,919.17 if it failed to close for 21 school days in 1977.

(2.33) West Muskingum Local School District in Muskingum County would have a deficit of \$332,943.42 if it failed to close for 48 school days in 1977.

(2.34) Parkway Local School District applied for a closing audit on October 19, 1977. As of November 16, 1977 that audit had not been completed by the Auditor's office.

(2.35) Fairlawn Local School District applied for a closing audit on November 16, 1977, which, as of that date, had not been completed.

(3) According to the information supplied to the plaintiffs by the Auditor's Office, closing audits were not performed for 16 of the 51 school districts which applied for closing audits because these districts either passed levies, cancelled the audits or were certified by the auditor to have no deficit.

(4) Of the 33 school districts which were certified by the Auditor to have a deficit if they completed the 1977 school year, at least 11 of those districts will close in 1977 unless they pass a levy prior to the closing date or unless they devise some other means to secure the funds necessary to avoid the deficit. These are: Canton City School District in Stark County, New Carlisle Bethel Local School District in Clark County, Eastern Local School District in Meigs County, Scioto-Darby County School District in Franklin County, James A. Garfield Local School District in Portage County, Northwest Local School District in Hamilton County, Perry Local School District in Allen County, Allen East Local School District in Allen County, Rootstown Local School District in Portage County, Blanchester Local School District in Clinton County and West Muskingum Local School District in Muskingum County.

(4.1) In addition to the 11 districts, enumerated above, the Cleveland City district, in Cuyahoga County, was scheduled to close school 51 days early in 1977. However, the

United States District Court for the Northern District of Ohio intervened and enjoined the early closing. The Toledo City district in Lucas County closed early; however, they passed a levy and thus were able to resume the school year.

(4.2) The Parkway Local School district in Mercer County and the Fairlawn Local School District in Shelby County recently applied for closing audits. Thus it is assumed that unless they pass an emergency levy, they will also close school early in 1977 due to a lack of funds.

(5) If all the school districts which are certified by the auditor to have deficits if they complete the 1977 school year (the 33 districts listed in Finding VII(C)(2) above, actually close in order to avoid those deficits, a total of 856 school days will be lost in 1977 by all of those districts. And 282,635 students will have lost a total of 10,352,122 pupil school days in 1977.

(6) If the 33 districts listed in Finding VII(C)(2) were to complete the school year without closing and without passing any additional tax levies, their total deficits, according to information provided by the State Auditor, would be \$37,461,371.84.

(D) Effects Of Closings

(1) All of the children deprived of schooling as a result of school closings suffered educational losses.¹⁴ The educational development of the children was affected because a loss of a day of instruction can never be recaptured. (Tr. 540, 7412). The learning process of the children in kindergarten and in the early primary grades is disrupted more by closings than is that of the older children because the beginners forget at a faster rate than the more advanced

¹⁴ Martin Essex conceded that it is very inconvenient educationally when a school district closes. (Tr. 346). It is greatly to be avoided. (Tr. 347).

students and, thus, have more to re-learn when they return. (Tr. 675, 704, 614, 688).¹⁵

(2) Although the lost days are made up during the second half of the school year, the loss in sequential learning cannot be made up. (Tr. 540). High school seniors are affected adversely by prolonged school years because their time to earn money for college or to hunt for jobs is curtailed. (Tr. 703-4).

(3) School closings and levy defeats also damage student morale and teacher morale. This damage has a detrimental effect upon the educational process. Students are also hurt psychologically by school closings. (Tr. 614-15, 675-6, 688, 739-40, 811).

(4) Not only do school children suffer academic damage when schools are closed, they also suffer damages as a result of being deprived of a continuity in extra-curricular activities such as sports and music. (Tr. 741, 856-8).

(5) Martin Essex stated that in his opinion it was proper for the state to stand by and allow the school districts to close for lack of funds. (Tr. 328).

(E) Educational Conditions In Closing Audit Districts

(1) Financial resources are so limited in the closing audit districts that in none of those districts are the children receiving more than barely minimal educational opportunities. The superintendents of those districts described the educational programs they are able to provide as "just able to get by" and below state minimum standards (Tr. 678), "barely adequate" (Tr. 709), not having enough money "to carry on an educational program" (Tr. 783), lacking "severely in the quality level" (Tr. 820), not allowing each child to ex-

¹⁵ Superintendent Frank Dick of The Toledo district, Superintendent Walter Joseph of the Benton-Carroll-Salem district and Superintendent Richard Coulter of the North Union District.

ploit his individual talents to the fullest (Tr. 900, 981), "the bare minimum . . . just enough to be chartered". (Tr. 983).

(2) In the case of each of the districts so disadvantaged, the conditions are the direct result of a severe shortage of funds.

(3) The physical plants in the audit districts are inadequate, obsolete, not well maintained and inefficient.

(4) The physical plants in a school district are substantially educationally significant. Obsolete, poorly lighted, inadequately maintained school buildings impair teaching and learning efficiency and have a negative effect upon student morale and motivation. (Tr. 488-489, 816-817, 1005-1007, 1122-1124).¹⁶

(5) Conversely, modern, clean, cheerful, well equipped and well maintained school facilities enhance teaching and learning efficiency, contribute to positive student and teacher morale and instill pride in students. (Tr. 1006-1007, 1124, 1160-1161, 1269-1270, 3795, 3800-3802).¹⁷

(6) The Superintendents from the audit districts described the deficiencies in the physical plants to be typically as follow:

(6.1) Due to a shortage of classrooms, the Blanchester Local district has been renting rooms in a nearby church. (Tr. 446). One building in that district requires a new roof, but the district does not have the necessary \$7000 to \$9000. (Tr. 460-1).

¹⁶ Marian J. Conrad, Professor Emeritus at Ohio State University; Robert E. Lucas, President of Wilmington College; Paul Schwamberger, Superintendent of Wayne Local School District; William Ferrell, Superintendent of Colonel Crawford Local School District; Robert Schneider, Superintendent of East Local School District; Charles Caniford, Superintendent of Federal Hocking Local School District.

¹⁷ Refer to footnote 16.

(6.2) In the Wayne Local district the heating plant is inadequate and the roofs need repair. (Tr. 488-9).

(6.3) In the Plain Local district, due to an inadequate number of classrooms, all of the teachers do not have their own classrooms. (Tr. 654-5).

(6.4) In the Benton-Carroll-Salem district there are boilers that need replacing and roofs that need repair. (Tr. 679).

(6.5) In the Colonel Crawford Local district the buildings are generally fifty years old and in disrepair. Maintenance has not been kept up and the heating facilities are in poor condition. (Tr. 816).

(6.6) In the Jackson-Milton Local district one of the buildings is quite old and needs a great deal of repair. It has poor lighting and requires new windows. An elementary school building depends upon a well for its water. The well is inadequately maintained and two days of school were lost when the well went dry. (Tr. 851).

(6.7) The Union Scioto Local district has a relatively new building which had to be closed because the district did not have the funds to operate it. (Tr. 882).

(6.8) The Ridgedale Local district has a new high school facility which has been occupied since 1975, however, it is unfinished due to lack of funds. The elementary schools are fifty years old and seriously in need of repairs, especially to their heating plants and roofs. (Tr. 916).

(6.9) The Ripley Union Lewis district has one building that is almost one hundred years old and other buildings that are fifty years old. The district has been unable to maintain these buildings satisfactorily. Recently one building was closed for two days due to a furnace malfunction. The furnace is so old that the district is unable to obtain parts for it. (Tr. 969-70).

(6.10) The Seneca East Local district has two buildings

which were built in the late 1920s. The windows need repair, as well as the furnaces and boiler systems. Outside and inside painting and plastering have fallen far behind. (Tr. 1002, 1005).

(6.11) The Federal Hocking Local district has a building that was built before 1900. All of its buildings are in "a very sad condition." (Tr. 1122). Two buildings were closed in 1975 because the roofs leaked so much that the plaster fell from the walls and the district did not have sufficient funds to make repairs. As a result of the closings, the junior high school students moved into the high school building with the high school students and went on double sessions. The double sessions have had a detrimental impact upon the educational program. (Tr. 1122-24).

(7) The audit districts have been forced to reduce their professional and non-professional staffs, have exceedingly high pupil-teacher ratios and class sizes, and are unable to pay salaries high enough to attract teachers having substantial training and experience.

(8) The ratio of teaching staff to students is educationally significant. It bears a direct relationship to the quality of the educational program. Low pupil-teacher ratios are especially important for primary grade students and for students who have learning disabilities and special educational needs. (Tr. 1165-6, 4458, 4669, 4670, 1385, 1471, 1385, 1471, 2150, 848-849, 1032). The educators who testified in this case were virtually unanimous in their agreement with this proposition.¹⁸

¹⁸ Robert E. Lucas, President of Wilmington College; G. Robert Bowers, Assistant Superintendent of Public Instruction for the State of Ohio; Harold Howe, vice-president of Education and Research for the Ford Foundation; John Ellis, Superintendent of the Columbus City School District; Paul Briggs, Superintendent of the Cleveland City School District; Raymond Brokamp, Assistant Superintendent of the Cincinnati City School District; Richard Rezek, Superintendent of the Jackson-Milton Local School District and James Tesar, Superintendent of Ontario Local School District are some of the educators who testified to this proposition.

(9) The training and experience of the teaching staff is also of tremendous educational importance.¹⁹ (Tr. 1162-3, 2989).

(10) The following conditions are typical of those existing in the audit districts:

(10.1) In the Blanchester Local district the pupil-teacher ratio is 26 to 1 in the kindergarten and 25 to 1 in grades 1 through 12. (Tr. 454).

(10.2) The North Union Local district is able to pay teachers only the state minimum salary and thus cannot attract the best teachers. The first six teachers who were offered special education teaching positions declined the offers. (Tr. 708).

(10.3) The Big Walnut Local district cannot afford to hire any elementary art teachers, elementary physical education teachers, elementary librarians or elementary guidance personnel. (Tr. 777).

(10.4) The Jackson Milton Local district has a pupil-teacher ratio of 29 to 1. (Tr. 848). It had only one high school math teacher for all 443 high school students until the school year 1976-77 when an additional math teacher was hired. However, due to lack of funds the second math teacher will not be retained. (Tr. 861).

(10.5) The Union-Scioto School district is not able to afford certificated music teachers, elementary art or physical education teachers. (Tr. 8885). It reduced its professional staff by 12 teachers in 1974 and presently has one principal operating two elementary schools with 800 students and one high school principal operating a high school with 750 students. (Tr. 882-883). The pupil-teacher ratio in the sixth grade is 32 to 1. (Tr. 891).

(10.6) The Grand Valley Local School District was forced

¹⁹ Robert E. Lucas and John R. Grate are two of the many educators who agreed with this proposition.

to reduce its certified personnel from 90 to 77 due to financial shortages. (Tr. 933). It has difficulty attracting new teachers due to its low salary schedule and it loses teachers to surrounding districts in which the salary schedules are higher. (Tr. 936).

(10.7) In the Ripley-Union-Lewis School district the elementary pupil-teacher ratio is 32 to 1. (Tr. 970-971). The district has had to lay off teachers due to financial shortages and presently has only one band teacher and one vocational teacher for three buildings. (Tr. 971, 975).

(10.8) The Ontario Local School District has had to reduce the number of its certificated personnel. (Tr. 1031). When it hires new teachers, it is forced to hire teachers who are at the bottom of the salary schedule and thus have no experience.

(10.9) In the Bellaire City Schools, the pupil-teacher ratio is 28 to 1 and some classes are as large as 30 to 40 to 1. (Tr. 1092). It loses many of its well-qualified and experienced teachers to other school systems which are able to pay higher salaries.

(10.10) The Federal Hocking Local School district is able to pay only the minimum salary schedule and therefore is able to hire only inexperienced teachers. (Tr. 1120-1121).

(11) In the audit districts the curricula are restricted and the course offerings are limited to the "basic" subjects. Most of those districts have had to curtail the breadth of their course offerings in recent years due to financial shortages.

(12) A full range of curricula is essential to affording to all students the opportunity to fulfill their educational potentials, especially children with learning disabilities and gifted children.²⁰ (Tr. 4458, 1166, 1169).

²⁰ Harold Howe, Vice-President of Education and Research for The Ford Foundation and Robert E. Lucas, President of Wilmington College are two of the many educators who stated this proposition.

(13) The superintendents from the audit districts described the restricted curricula and limited course offerings typically to be as follows:

(13.1) The Blanchester School District, in spite of its goal to provide a comprehensive educational program, has been unable to offer more than the minimum state requirements due to a shortage of funds. It does not even have a qualified reading teacher. (Tr. 455-456).

(13.2) The Wayne Local School District has had to reduce the quality of its overall instructional program and its present program does not permit each student to realize his individual talents to the fullest. (Tr. 488, 490).

(13.3) The Plain Local School District has been forced to cut back the breadth of its educational program. It does not offer music or art at the elementary level nor does it offer physical education on a full-time basis. (Tr. 652, 662).

(13.4) The Benton-Carroll-Salem School District offers only minimal educational programs and has not been able to meet state standards for many years. The curriculum requires additional courses in mathematics, English and foreign languages which the district does not have the funds to provide. (Tr. 678-679).

(13.5) The North Union Local School District has been forced to make many cutbacks in its educational program offerings and its present program is barely adequate. Foreign languages are offered for only two years and math is offered for only four years. (Tr. 707, 709, 711).

(13.6) The Groveport-Madison School District has had to make cutbacks in its educational program due to financial shortages. It presently needs more middle school reading, science and language arts teachers and more courses in advanced science and mathematics. (Tr. 741, 747).

(13.7) The Big Walnut Local School District is able to offer only a basic educational program to the elementary and

middle school children. It does not have elementary art teachers, physical education teachers, librarians or guidance personnel. The educational program offered to the junior and senior high school students is also deficient due to lack of sufficient financial resources. (Tr. 777, 779, 783).

(13.8) The Colonel Crawford Local School District does not offer a sufficient number of courses to provide a high quality educational program to its students, especially to its gifted students. (Tr. 820).

(13.9) The Jackson-Milton Local School District has been required to eliminate many of its social studies courses and presently has a deficient social studies department. The course offerings in the areas of mathematics and science are also deficient. (Tr. 855, 861-62).

(13.10) The Union-Scioto Local School District offers only a minimal educational program to its students. It does not have a fully certified elementary music teacher, elementary art teacher or physical education teacher. It does not have a counselor for the elementary children, only one full-time counselor for the high school children and one part-time counselor for the junior high school children. It does not have a comprehensive foreign language department, nor does it have a full range of mathematics courses. (Tr. 855, 892, 894).

(13.11) The Ridgedale Local School District is not able to hire art teachers, music teachers or elementary librarians due to a lack of financial resources. (Tr. 915).

(13.12) The Grand Valley Local School District has a deficient educational program. (Tr. 942).

(13.13) The Ripley-Union-Lewis School District offers only the minimum courses required by the State of Ohio in order to remain a chartered high school. It has only one music teacher and one vocational educational teacher for three

buildings. It offers a very limited college preparatory program. (Tr. 970, 975, 977).

(13.14) The quality of the educational program of the Ontario Local School District has declined due to a cutback in the teacher salary schedule. (Tr. 1046).

(13.15) The Bucyrus City School District is able to offer only a basic educational program to its students. (Tr. 1073).

(13.16) The Bellaire City School District offers only a minimal educational program to its students. It has no advanced courses at the high school level except for physics. (Tr. 1127, 1133).

(14) The audit districts do not provide a full range of extra-curricular activities and have been forced to reduce their extra-curricular programs in recent years due to financial shortages.

(15) Extracurricular programs are educationally essential. They are not frills. They afford certain students the opportunity to succeed which they do not have in the classroom. They provide children the motivation to succeed academically and they teach values which cannot be derived in the classroom. A school system which lacks the essential elements of a comprehensive extracurricular program is not fully equipped to educate children. (Tr. 1161-2, 1239-42, 771, 789-9, 859, 889-90, 974, 1031-2, 1048, 1555).²¹ The educators who testified were unanimous in support of that proposition.

(16) The superintendents from the audit districts described their limited extra-curricular programs typically to be as follows:

²¹ Robert E. Lucas, President of Wilmington College, Highland Sounders, Superintendent of Big Walnut Local District, James Tesar, Superintendent of Ontario Local School District; James Ferguson, Superintendent of Ripley-Union-Lewis School District; Guy DeAngelys, Superintendent of Union-Scioto Local School District.

(16.1) The Big Walnut Local School District has been forced to cut back its athletic program. (Tr. 770).

(16.2) The Colonel Crawford Local School District has been forced to cut out its basketball and football programs. (Tr. 858).

(16.3) The Union-Scioto Local School District has been forced to cut back many of its extracurricular programs. It cut out junior high school basketball and all athletics for junior high school girls. (Tr. 889).

(16.4) The Ripley-Union-Lewis School District has had to cut out its football program. It is unable to provide uniforms or instruments for the school band. (Tr. 973-974, 977).

(16.5) The Ontario Local School District has had to abolish intramural programs in the elementary and middle school and field trips for all students. (Tr. 1031).

(16.6) The extracurricular athletic program in the Federal Hocking Local School District operates largely with money raised by volunteer organizations. (Tr. 1130-31).

(17) The audit districts uniformly suffer from a shortage of textbooks and the financial inability to purchase up-to-date textbooks.

(18) It is beyond dispute that having up-to-date textbooks for every student is essential to providing even a minimal educational opportunity to children. (Tr. 1167).²²

(19) The following textbook deficiencies exist in the audit districts.

(19.1) The Blanchester Local District budgets \$6.50 per pupil annually for textbooks and is unable to keep its texts current with that amount of money. (Tr. 458-9).

(19.2) The Toledo district has not been able to adopt any new texts in a period of eight to ten years, even though

²² Robert E. Lucas, President of Wilmington College.

the state minimum standards require new adoptions every five years. (Tr. 595-6).

(19.3) Not all of the students have their own textbooks in the Plain Local district. (Tr. 654).

(19.4) The Benton Carroll Salem district lacks the funds to replace textbooks that teach that some day man will walk on the moon. (Tr. 678-9).

(19.5) The board of education of The Big Walnut Local district has frozen the purchase of any new textbooks, library books and other supplies. (Tr. 767).

(19.6) The Madison Local district has curtailed the purchase of textbooks and library books. (Tr. 742).

(19.7) The Jackson-Milton Local district has not made a major expenditure for textbooks in the last seven years. Students may not take books out of the classrooms because the students in the next class must use them. (Tr. 854).

(19.8) In the Union Scioto Local district the library has a very limited number of books. The textbooks are outdated. The children have to share books. The district cannot comply with the state requirement that texts be replaced every five years. (Tr. 888).

(19.9) Similar textbook deficiencies exist in the Ridgedale Local, Grand Valley Local, Bellaire City and Federal Hocking districts. (Tr. 915-16, 933, 943, 1094, 1127, 1130).

(20) The children in the audit districts are similarly deprived of library books, educational equipment and educational supplies.

(21) The following conditions typically exist:

(21.1) The Blanchester Local district has one librarian for 2200 students and has no media center. The children do not have access to any tapes or records. Nor do they have any individualized study areas. (Tr. 456-7).

(21.2) The Jackson-Milton Local district has a new library in the middle school but the shelves are almost completely empty. (Tr. 852).

(21.3) The Madison Local district has the barest minimum of educational supplies. (Tr. 748). It needs more equipment and material for math and science courses. (Tr. 747).

(21.4) Ridgedale Local district is unable to buy necessary audio-visual materials. (Tr. 913). It does not have a copy machine for teachers, overhead projectors or cassette recorders. Thus it cannot show films. It does not have in-school television. As a result it is unable to bring in special educational TV programs which are provided by state universities. (Tr. 920).

(21.5) The Grand Valley district has no funds with which to replace buses that have more than 100,000 miles on them. Nor can it afford to pay mechanics to work overtime to keep the old buses in good condition. (Tr. 934).

(21.6) Federal Hocking Local district has copy machines, but no paper. Some schools have no writing paper for the children. It does not have adequate tools to teach industrial arts or materials to teach science properly. The district does not buy chalk by the box. It buys it by the stick. (Tr. 1128-32).

(21.7) Seneca East Local district, Ontario Local district, and Bucyrus City district suffer from a similar shortage of educational supplies and equipment. (Tr. 1008, 1031, 1032-3, 1974).

(F) Conditions of Educational Deprivation Similar To Those Which Exist In The Closing Audit Districts Exist In More Than Half Of Ohio's School Districts

(1) The plaintiffs showed with documentary and statistical evidence and with expert testimony that in all likelihood the conditions of educational deprivation which exist in the audit districts also exist in all of the districts in the state which fall in the same range of dollars per pupil as do the audit districts. The number of districts which are similarly limited financially is 377. They comprise over 60% of the districts in the state. Eight hundred ninety five thousand students are enrolled in those districts. (Tr. 3146).

(2) The witness who expressed the foregoing conclusion is Robert H. Wessel, PhD., Professor of Economy and Administration at the University of Cincinnati, an expert in both applied statistics and public finance. (Tr. 3084). Dr. Wessel's conclusions have such significance to the issues in this case that it is appropriate to set them forth herein in detail:

(2.1) Dr. Wessel reviewed the testimony of the superintendents from the following districts: the Blanchester Local School District; the Wayne Local School District; the Plain Local School District; the Benton-Carroll-Salem Local District; the North Union School District; the Madison Local School District; the Big Walnut School District; the Jackson-Milton Local District; the Ridgedale Local District; the Grand Valley Local School District; the Union-Scioto Local School District; the Ontario Local School District; the Ripley-Union-Lewis Local School District; the Seneca Local School District; the Bellaire City School District; the Federal-Hocking Local School District; the Colonel Crawford Local District; the Bucyrus City School District; and the Toledo City School District. (Tr. 3135-3136).

He also examined statistical data compiled by the Ohio Department of Education relating to Ohio school districts including the foregoing districts. (Tr. 3137).

(2.2) Dr. Wessel found from the testimony and the data that all of these districts (listed in 2.1 above) have two important characteristics in common: (a) the levels of total support are low and (b) the educational opportunities provided by these districts are generally inadequate. (Tr. 3137).

(2.3) Dr. Wessel noted that the average school operating millage rate for these districts was 24.3, that the average property valuation per pupil was \$18,400, the average median family income was under \$10,000 (Tr. 3138), and that 17 of the 19 districts enumerated had less than \$1000 per pupil in total state and local support.²³

(2.4) Altogether there were 377 districts in the state (over 60% of the districts) that had less than \$1000 in total support in 1975-76 and there were 895,000 children attending school in those districts. Thus, the closing audit districts fall into the same general total support range in which more than half of Ohio's school districts fall. (Plaintiffs' Exh. 345-56, Tr. 3145-6).

(2.5) Dr. Wessel also noted that the closing audit districts exhibit the following symptoms of inadequate funding:

- (a) the inability to hire experienced teachers; (Tr. 3139).
- (b) the lack of a sufficient number of current teaching materials including textbooks; (Tr. 3140).
- (c) the lack of classroom equipment; (Tr. 3140-41).
- (d) the lack of adequate art, music and physical educational programs; (Tr. 3141).
- (e) an inadequate number of counselors and psychologists; (Tr. 3141).

²³ The two districts which had more than \$1000 per pupil in total state and local support were Toledo, which had \$1061, and was forced to close for lack of funds in both 1976 and 1977, and Ontario whose total support per pupil was \$1225. (Plaintiffs' Exh. 245-56). Ontario applied for an audit which it cancelled because of the repeal of a statute which caused the district to sustain a penalty and thus incur a deficit (Tr. 1034). Presumably, Ontario is atypical of the closing audit districts.

- (f) inadequate extracurricular programs; (Tr. 3141-2).
- (g) the poor condition of physical plants; (Tr. 3142) and
- (h) narrow and austere curricula. (Tr. 3143).

(2.6) Dr. Wessel concluded that the conditions noted above are likely to be pervasive in all of the 377 districts which had less than \$1000 per pupil in total support in 1975-76. He stated that "when we have a sample of 17 and all of them exhibit the same characteristics, it would be very unlikely if this characteristic were not attributable to the great majority of the other school districts with under \$1000 funding." (Tr. 3147). He stated also that "under \$1000 per pupil is just not adequate to bring the school districts out of the state of poverty." (Tr. 3147).

(2.7) Dr. Wessel's conclusion was further corroborated by his examination of Ohio Department of Education data compiled by the Education Testing Service which relates the districts' levels of total and state and local support to the levels of expenditures for instruction, for libraries and for operation and maintenance, and to their average teacher salaries. That information, which appears on Plaintiffs' Exh. 166, which is reproduced herein, shows that the districts having less than \$1,000 in total support were not able to spend nearly as much for instruction and for teacher salaries as were the districts having substantially more in total support. (Tr. 3153-57).

Total Support 1974-75	State & Local Support Per Pupil	Total Expenditures Per Pupil	Administrative Expenditure Per Pupil	Instructional Expenditure Per Pupil	Expenditure Per Pupil	Library Expenditure Per Pupil	Operation Maintenance Expenditure Per Pupil	Average Teacher Salary Per Pupil
\$ 574 -	\$ 801	\$ 815.43	\$ 30.33	\$ 481.72	\$10.30	\$ 100.86	\$ 9,139	
802 -	843	883.30	31.50	518.02	11.72	106.41	9,580	
843 -	880	916.70	33.26	543.15	12.03	115.86	9,778	
880 -	925	964.11	35.45	558.81	13.19	122.14	9,925	
865 -	973	1,022.00	31.77	605.10	12.53	124.14	10,418	
974 -	1,024	1,077.62	30.85	660.56	16.46	142.68	10,865	
1,025 -	1,095	1,151.35	34.84	663.93	13.59	153.59	11,075	
.97 -	1,152	1,190.18	39.96	693.05	15.29	150.10	12,062	
1,152 -	1,204	1,212.92	38.77	725.78	24.50	177.94	12,049	
1,208 -	4,001	1,519.72	48.70	848.67	28.99	203.38	12,145	
								(Deciles of Pupils)

Source: SF-12 forms, Form 25, Ohio
Department of Education, analyzed
and compiled by Educational
Testing Service.

(2.8) Dr. Wessel's conclusion was also corroborated by his analysis of the reports of inspection of the school districts to determine their state of compliance with minimum standards. (Plaintiffs' Exhs. 1001 to 2848). That analysis (Plaintiffs' Exh. 165) shows that the percentage of deficiencies is absolutely and inversely correlated to the level of support which the districts have, and that the percentage of deficiencies noted in the schools which have less than \$1000 per pupil in total support is higher than in the districts which have more than \$1000. Specifically, in the category of personnel, the percentage of buildings deficient is more than 67% in the districts with less than \$1000 in total support as compared to 58% in the districts with more than \$1000. In the category of curriculum, the percentage of deficiency is 58% in the districts below \$1000, 46% in those above it. Thus, as Dr. Wessel observed, the inspection reports tell the same story that the superintendents tell. (Tr. 3152).

(3) From the above evidence, the Court concludes that conditions of widespread educational deprivation which the testimony of the superintendents showed to exist in the closing audit districts, exist throughout more than half of the school districts in this state.

(G) Conditions In Urban Districts

(1) The same conditions of educational deprivation existing in the audit districts, which, with the exception of Toledo, are essentially rural, also exist in the principal urban, inner-city districts. The plaintiffs introduced substantial evidence of educational conditions in the Toledo, Cleveland, and Columbus school districts, and presented comprehensive evidence of educational conditions in the Cincinnati City district, one of the representative plaintiffs. Based upon the testimony of Superintendent Briggs of the Cleveland district, Superintendent Dick of the Toledo district and Superintendent Ellis of the Columbus district concerning conditions in those

districts, the conditions which the evidence shows to exist in the Cincinnati district are so essentially similar to those which exist in the other three urban districts that the Court regards them to be deserving of separate findings.

(2) The following conditions exist in the Cincinnati City School District:

(2.1) The Cincinnati School District has barely enough resources to maintain a minimal educational program in 1977. (Tr. 1576, 1876).

(2.2) It is unable to make any program improvements. (Tr. 1579).

(2.3) Its costs are escalating and it faces a decline in revenue. (Tr. 1715-1716).

(2.4) A tax levy failed in June, 1977.²⁴ (Tr. 7379).

(2.5) The last time that the Cincinnati District was able to pass a school tax levy was in 1969. (Tr. 1708).

(2.6) The District has had successive levy failures in 1970, 1972, 1973, 1974. Since 1965 seven out of eight proposed levies have failed. (Tr. 1708).

(2.7) Since the mid-1950's the educational program offered by the Cincinnati School District has consistently declined both quantitatively and qualitatively as a direct result of the failure of the district's total revenues to increase at the same rate as educational costs. (Tr. 1712-1716, 1548-1549).

(2.8) In 1967 a number of reductions in the budget were necessary due to the financial limitations of the school district. \$500,000 in deferred maintenance was cut from the budget. Educational television was cut by \$117,000. (Tr. 2085-2086). \$165,000 for the purchase of instructional materials was eliminated. (Tr. 2089). In-service training for

²⁴ The Court judicially notices that another school tax levy failed in November, 1977.

teachers was substantially curtailed. (Tr. 2090). In order to save an additional \$130,000, the opening of several new schools was deferred. (Tr. 2092). It was necessary to curtail the use of school buildings by students for social purposes in the evenings. (Tr. 2092-2093). The budget for adult and evening classes was reduced by \$145,500. (Tr. 2096). The summer school program was cut by \$150,000. (Tr. 2097). \$420,000 for needed buildings was eliminated. (Tr. 2097). These cutbacks and others totaled a \$2,623,000 reduction in the 1967 budget.

(2.9) In 1969 another \$2,399,000 was trimmed from the budget. The District began to eliminate clerical staff. Professional meeting funds were further curtailed. (Tr. 2098). Instructional and office supplies, books, in-service training, and summer school were further curtailed. (Tr. 2099). The Board reduced its contingency fund by \$500,000. The maintenance budget was cut by an additional \$369,000. (Tr. 2100).

(2.10) In 1971 it was necessary for the district to reduce its professional staff by approximately one-fourth. (Tr. 2101). The free use of buildings and grounds by student groups, parent groups and community groups was eliminated. (Tr. 2102). The number of the district's security aides was reduced by 40% even though the need for security was greatly increased due to student unrest. (Tr. 2102-2103). The clerical staff was further reduced. (Tr. 2103). The medical division within the school district was eliminated. (Tr. 2104). The administrative and supervisory staff was reduced. (Tr. 2105). The opportunities for teachers to visit other schools and school districts were eliminated. (Tr. 2114). A publication entitled "Schools in Action" in which the superintendent communicated with teachers and principals was abolished. (Tr. 2114). Elementary counselors and junior high and reserve athletics were eliminated. (Tr. 2116). The effect of the 1971 cutbacks on the athletic program has been severe and is still being felt today. (Tr. 2117). The budget for the school district's supplies was reduced by an additional \$103,000.

The kindergarten program was reduced by 50%, and thus the children attended kindergarten every other day or for one-half of the school year. (Tr. 2119-2120).

(2.11) The reduction in staff which the district was forced to make in 1971 resulted in a permanent reduction in instructional time for students which still exists today. The school day had to be reduced by one hour and this resulted in a loss of educational opportunities to students. (Tr. 2122-2138).

(2.12) As a result of the reduction in the number of staff and the length of the school day, many courses had to be eliminated. Thus the breadth of the district's curriculum in the secondary schools was severely limited. (Tr. 2142).

(2.13) Both teacher and student achievement was negatively affected by these changes and many teachers left the Cincinnati School System. (Tr. 2144-2146).

(2.14) The cutbacks made in 1967 and 1971 have not been restored and thus the educational program has continued to deteriorate. (Tr. 1547-1549, 1715).

(2.15) The Cincinnati School District does not have the funds to adequately maintain its school buildings and thus the buildings are deteriorating. (Tr. 1936, 1960).

(2.16) There is presently a backlog of maintenance needs, which has been accumulating since 1966, totaling \$7.5 million. (Tr. 1960).

(2.17) There are deteriorated pipes in the water supply system and in the heating system. (Tr. 1960). Many of the older buildings still have their original plumbing which is now corroded and rusted. (Tr. 1961). Because there is no money to replace old plumbing, the plumbing systems must be constantly repaired in order to keep them operating. (Tr. 1961). The pipes often leak causing plaster to deteriorate, floors to buckle and causing a general unkemptness in the buildings. (Tr. 1961). The plumbing systems need a total of \$345,000 of deferred maintenance work performed. (Tr. 1960).

(2.18) Many of the older buildings have antiquated electrical systems which constantly break down. There are a few schools which have inadequate lighting. The backlog of deferred electrical maintenance work totals \$400,000. (Tr. 1962).

(2.19) There are at least 21 roofs which need serious repair. The district's inability to make these repairs has resulted in water leakage damage to plaster and floors and in deterioration of the structure of the buildings. (Tr. 1963). The backlog of deferred roofing repairs totals \$500,000. (Tr. 1962).

(2.20) None of the interiors of the school buildings have been painted for over five years. For five years the school system has been unable to follow its normal schedule of painting the interior of each building every sixth, seventh or eighth year, depending on need. Thus, there are some buildings whose interiors have not been painted for over fifteen years. (Tr. 1963). Many of the interiors have cracked and peeling plaster, peeling paint, smoke stains on the walls from the heating system, and graffiti on the walls. (Tr. 1964). The backlog of deferred interior painting work totals over \$2,000,000. (T. 1963).

(2.21) Even though the exterior painting needs of the buildings are given a high priority in order to protect the buildings from rot and rust, the deferred exterior painting needs of the Cincinnati school buildings total \$625,000. (Tr. 1964).

(2.22) Three buildings have serious structural problems which require repair. (Tr. 1964-1965).

(2.23) The playground and grounds maintenance backlog totals \$50,000. (Tr. 1965).

(2.24) Many of the old buildings require repairs as well as mechanical and structural improvements in order to conserve

energy. These deferred maintenance needs total approximately \$2,800,000. (Tr. 1965).

(2.25) The total maintenance budget for the Cincinnati School System was approximately \$3,000,000 in 1976 and is expected to be only slightly higher in 1977. Consequently, the buildings will continue to deteriorate due to the continuing lack of resources for repair and maintenance. (Tr. 1966-1967).

(2.26) The maintenance budget for the Cincinnati School District in 1960 was \$2,000,663. Thus, the budget increased only 13% from 1960-1976 in spite of a 30% increase in the amount of building space to be maintained. (Tr. 1967).

(2.27) The program of preventive maintenance which prevents unnecessary and rapid deterioration of physical plant facilities, was terminated in the late-1960's due to budget cuts. (Tr. 1968). The present maintenance program is thus one of prioritizing emergencies. (Tr. 1969).

(2.28) The inability to perform preventive maintenance has resulted in extra costs. For instance, a gymnasium floor costing \$50,000 had to be replaced due to a leaking plumbing system. (Tr. 1962, 1969).

(2.29) The buildings of the school district are inspected by the Cincinnati Health Department. (Tr. 1971). The Health Department has cited such conditions as peeling paint in lunchroom ceilings, hot water temperatures not high enough in dishwashers, drafty classrooms, and water stained ceilings as health hazards. The district has not been able to correct all the violations cited by the Health Department. (Tr. 1972-1973).

(2.30) The buildings in the Cincinnati School system are inspected by the Fire Department which has cited such conditions as malfunctioning hardware on exit doors, malfunctioning fire alarm systems and inadequate water pressure as fire hazards. Although all of the conditions which constitute

health and safety hazards receive high priority for repairs, the district has been unable to correct all of the violations cited by the Fire Department. (Tr. 1973-1974).

(2.31) The vocational shops and industrial arts shops are inspected by the Industrial Commission for conditions such as the improper grounding of motors or electric circuits and the improper exhaust of fumes. The Cincinnati district has been cited for violations by the Industrial Commission, but has not been able to correct all of the cited conditions. (Tr. 1974).

(2.32) The sole reason for the failure to correct any of the violations referred to in Finding 2.29-2.31 above is insufficient funds. (Tr. 1975).

(2.33) In 1960 the district had 576 custodians. In 1976 it had only 578 custodians despite a 30% increase in building space since 1960. The result of having an insufficient number of custodians has been a reduction in the frequency of cleaning the classrooms, the lunchrooms and the restrooms. The windows are washed, at most, only once a year and furniture is rarely washed. (Tr. 1976-1977).

(2.34) The interiors of the buildings have deteriorated seriously in the last fifteen years. As a result, the school environment is no longer conducive to encouraging the students to take care of their school buildings because the buildings are never clean. (Tr. 1978, 2409).

(2.35) The Carson Elementary School requires painting and plumbing repairs. The lunchroom is not located in the main school building, but is located in an Army barracks which is used as an annex to the school building. The children must go to the barracks building in order to eat their lunch. The lunchroom does not have an automatic dishwasher so the trays and dishes are washed by hand. The paint on the ceiling of the lunchroom is peeling. Five classrooms are also located in the army barracks and there is insufficient lighting and heat in these classrooms. (Tr. 2277, 2283).

(2.36) The Hyde Park Elementary School has not been painted in ten years. There is only one boys' bathroom and one girls' bathroom both of which are located in the basement. The boys' bathroom is often odoriferous and the odor travels across the hall to the kindergarten classroom. (Tr. 2617-2628).

(2.37) The Fire Department found 101 fire Code violations in the Walnut Hills High School last year. At least one of the classrooms has plaster which falls from the ceiling. (Tr. 2661).

(2.38) The Sands Elementary School is dirty. The wallpaper is coming off the walls, the bathrooms are obsolete, the classrooms are small and the window shades are falling apart. (Tr. 2536, 2539).

(2.39) The Lyon Junior High School had 351 of its windows broken. It presently has inadequate lighting because the glass of the broken windows was replaced with non-breakable vinyl and the old style bulbs used in the lighting fixtures are an inadequate source of light. (Tr. 2498).

(2.40) The Western Hills High School is over 50 years old. The halls are drab. The lighting is inadequate. The classrooms are unattractive. "The whole decor of the building is just plain miserable." (Tr. 2409).

(2.41) The Sawyer Junior High School has a great many broken windows. (Tr. 2368).

(2.42) The deteriorating condition of the physical facilities adversely affects the ability of the children to learn. (Tr. 2543).

(2.43) The pupil-teacher ratio in the Cincinnati School District is approximately 28 to 1 which is among the highest in the state. (Tr. 2147-2148).

(2.44) Because of the reduction in the length of the school day in 1971, most of the teachers are required to teach

throughout the school day without an opportunity for rest, for preparation or for consultation with other teachers, students or parents. (Tr. 2151).

(2.45) As a result, teacher fatigue is high, teacher morale is low, and teacher effectiveness is impaired. (Tr. 2595-2598). Teacher absenteeism is also high. (Tr. 2166). Many teachers have left the district to teach in suburban districts where the conditions are better. (2405).

(2.46) The Cincinnati School District does not have the funds to employ a sufficient number of teachers, librarians, (Tr. 2160), clerical assistants, (Tr. 2160), nurses, administrators, security personnel, counselors, visiting teachers, psychologists, and speech and hearing therapists. (Tr. 2165-2167, 1551, 1556, 1572-1574, 2015).

(2.47) The Cincinnati School District is able to employ only one psychologist for every 4000 students and is thus below the state minimum standard of one psychologist for every 3000 students. (Tr. 2003).

(2.48) The Cincinnati School District's psychologists can handle the psychological needs of only one-half of the children referred to them. (Tr. 2001).

(2.49) The Cincinnati School System is not able to comply with the state requirement of one counselor for every 400 students. The number of counselors presently employed by the district is five below the state minimum requirement. (Tr. 2016, 2017).

(2.50) The Cincinnati School System employs only five nurses for the whole district. This nursing personnel cannot begin to meet the health needs of the Cincinnati students. (Tr. 2007-2008). For instance, one elementary school was forced to close down because a majority of the students became affected with lice. (Tr. 2006).

(2.51) Each visiting teacher in the district is assigned the

responsibility to inquire into the attendance of all of the students in five separate schools. (Tr. 2009). There are no visiting teachers assigned to the high schools. (Tr. 2011).

(2.52) The principals of the schools have very small staffs including clerical staffs. (Tr. 2170).

(2.53) There is a severe shortage of consultants in the system. One of the reading instructional consultants supervises 126 teachers, over twice the number of teachers whom she can contact in the course of one school year. (Tr. 2439).

(2.54) The district cannot afford to provide special teachers in art, music and physical education for the primary grades. These subjects are taught by the classroom teachers, many of whom are not equipped to teach them. (Tr. 2541, 2568, 2289-2290).

(2.55) There are not enough adults on duty in the schools to make many of the schools safe for the students and the teachers, to maintain discipline and to prevent massive vandalism. (Tr. 1156, 1572, 2051-2052, 2367-2368, 2483, 2325). In the spring of 1976, a survey of the Cincinnati School system showed that 58% of the 4,000 elementary students surveyed, 36% of the 2,000 junior high students surveyed and 50% of the 3,000 senior high school students surveyed stated that they did not feel safe in school. (Tr. 1570).

(2.56) The district has only 91 security aids, and needs three times that number. (Tr. 2015).

(2.57) Student vandalism is a major problem in the district. It costs the district \$500,000 a year, of which approximately one-half is expended to replace broken windows. (Tr. 2054). The type of vandalism which typically occurs in the district is illustrated by Plaintiffs' Exh. 48. The district is unable to keep up with the repairs required by the vandalism. (Tr. 2056).

(2.58) The degree of vandalism would be substantially reduced if the district were able to employ professional per-

sonnel to deal with the intellectual, psychological and social needs of the students and to maintain discipline in the schools. (Tr. 2049, 1572).

(2.59) The district can afford to provide its teachers virtually no in-service training. (Tr. 1552). As a result of this inability, many teachers who could be effective are left on their own to flounder and fail. (Tr. 2153).

(2.60) Besides not having an adequate number of teachers, the district does not have an adequate number of specialists to deal with the special educational problems of an urban school district. (Tr. 1556). The district has limited resources for the children who have special needs, but who do not qualify for categorical programs. (Tr. 2160). The district does not have programs for gifted children except for a limited program at Walnut Hills High School for 75 students. (Tr. 2160, 2204).

(2.61) While the children in the specially funded categorical programs have the benefit of lower mandated class sizes, in the Cincinnati district as in every other district, the limited professional staff and very high pupil-teacher ratio causes the general students in the district to receive very little individual attention. In a very real sense, the most disadvantaged student of all is the regular student in the large underfunded inner city district, such as the Cincinnati School District. (Tr. 2169-2170). This accounts, to some degree at least, for the migration of many middle class families to suburban school districts.

(2.62) Due to the curtailment of the school day as a result of the substantial reduction in professional personnel, the breadth of the curriculum was effectively curtailed. Not only were some courses eliminated altogether because there was no one to teach them, but the reduced number of class hours has prevented students from having the opportunity to schedule as many courses as they might like. Students have

few opportunities to take courses beyond those courses required for graduation. (Tr. 2160).

(2.63) In addition, the curtailment of class hours has reduced the students' exposure to the basic courses. (Tr. 2395).

(2.64) As a result of these staff and curriculum limitations, the educational opportunities in the Cincinnati School District have declined quantitatively and qualitatively. (Tr. 1611, 2161). As a result the school children are generally grossly deficient in basic skills. (Tr. 1560).

(2.65) The district lacks the funds to implement the results of its research and development in the area of curriculum innovation. (Tr. 1557-58).

(2.66) The district provides insufficient remedial reading programs. It has developmental reading programs in only three of its sixteen junior high schools. (Tr. 2318).

(2.67) Educational conditions are worse in the junior high schools than in the elementary or high schools. In 1977 a special task force studied the problems in the junior high schools and made nine recommendations for improving those conditions. (Plaintiffs' Exh. 40). Due to lack of funds, the district has not been able to implement any of those recommendations. (Tr. 1600-1610).

(2.68) No secondary school in the district is totally in compliance with state minimum standards. (Tr. 2182).

(2.69) As a result of the elimination of summer school, many students are unable to progress to the next grade with their classes. (Tr. 2490-2491).

(2.70) The Cincinnati district is able to offer few extracurricular activities to its students. (Tr. 1554, 2494).

(2.71) The athletic and music offerings are minimal and inadequate. There are no hobby clubs. (Tr. 1555, 2162). Field trips have been almost completely eliminated. (Tr. 2178).

(2.72) There are no instrumental music offerings at the elementary level. Only three high schools have marching bands. (Tr. 2160). In the 1976-77 school year a lower percentage of the system's students were enrolled in music courses than at any time in the last 17 years. (Tr. 2566). The basic reason for the decline in the music program is reduction in the length of the school day. (Tr. 2567). No performing group from the Cincinnati district was able to enter a state music contest in the 1975-76 school year. (Tr. 2566). With the exception of the Alternative School for the Creative and Performing Arts and the Walnut Hills High School, there are only two orchestras among the 16 junior high schools and two orchestras among the eight senior high schools. (Tr. 2573). There are only three instrumental music teachers for all of the elementary schools and they are string teachers. (Tr. 2568). The district does not have the funds to replace the musical instruments which are lost or to repair those which are damaged. (Tr. 2571). The district was forced to lay off its one piano tuner. (Tr. 2572).

(2.73) The district lacks funds to employ the number of coaches necessary to develop successful athletic programs. Teams from Cincinnati schools cannot compete successfully against teams from other districts. (Tr. 2162, 2419). In addition, the athletic facilities are inadequate. Two of the high schools have no football fields. The gymnasiums in many of the junior and senior high schools are inadequate. (Tr. 2402, 2488). The Withrow basketball team has to play its games at the Walnut Hills gymnasium. (Tr. 2162-3). The district is not able to provide any intramural sports offerings. (Tr. 2180).

(2.74) The Cincinnati district's textbooks and instructional aids are obsolete. (Tr. 2177). There are not enough books so that all of the children may be assigned their own books. (Tr. 2476, 2447). For that reason, homework cannot be assigned to some students. (Tr. 2544). The language arts books do not cover a wide enough range of ability levels. (Tr. 2448).

(2.75) Many schools in the Cincinnati district have inadequate libraries. (Tr. 2159).

(2.76) The Cincinnati district cannot afford to purchase films, tape recordings and other educational supplies. (Tr. 2159). Teachers must spend their own money to purchase cassettes, workbooks and other necessary educational supplies. (Tr. 2544).

(2.77) The Cincinnati district has established approximately 35 alternative schools and programs throughout the system. Those have been established for the purpose of offering specialized curricula suited to the varying needs and interests of the children and in order to improve racial balance among students. All of the alternative schools are racially balanced. In the 1976-77 school year more than 8,000 children attended alternative schools. The district hopes to have 12,000 students enrolled in alternative schools by the 1977-78 school year. Yet the district's financial limitations preclude the district from expanding its alternative programs and schools. (Tr. 1561-66, 1887-91).

(2.78) The Cincinnati district incurs certain special costs which are occasioned by problems unique to urban school systems. Those costs, which are delineated in Plaintiffs' Exh. 48 for the 1975-76 school year are as follows: The district expended \$1,614,382 from its general funds on its vocational educational programs and \$858,854 on its special educational programs. The categorical grants for the vocational education and special education units are not adequate to defray the entire costs of those programs. The district expended \$682,000 for transportation because the state subsidy was inadequate. In addition, it expended approximately \$500,000 to repair the damage caused by vandalism, \$100,000 for plant security, \$360,000 for student security and \$620,000 for attendance services. These expenditures total \$4,735,236. (Tr. 1785-7). This amount does not represent the cost of dealing with the educational problems which gave rise to the expenditures. In addi-

tion, there are numerous problems which the Cincinnati district has because of its urban, inner-city character and which it lacks the financial resources to deal with.

(2.79) In 1976-77 the Cincinnati district had slightly more than \$1200 per pupil in total state and local revenue. It is estimated that the district needs an additional \$500 per pupil at the present time to bring the program to an acceptable minimum level and an additional \$1000 per pupil to bring it to a high quality level (assuming no increases in teacher salaries and no expenditures on its plant and facilities). (Tr. 2185-6).

(3) Based upon all of the foregoing findings, the Court finds that the Cincinnati City School District is financially destitute, is starved for funds, lacks teachers, adequate buildings and equipment, and that the school children resident in that district are receiving submarginal educational opportunities.

(4) The Toledo City School District, also a large urban, inner-city district, closed its schools in 1976 and in 1977 because of a lack of funds. The 1976 closing occurred on December 3rd. (Tr. 519). The 1977 closing was scheduled for October 13th. (Tr. 7407). The Court judicially notices that the 1977 closing actually occurred on October 28th. The Toledo district's students lost 13 school days in 1976 (Tr. 566) and will lose approximately 35 school days in 1977. (Tr. 7407).

(5) The Toledo district had a school levy defeated in November of 1975, one defeated in June of 1976 and had an emergency levy defeated in November of 1976. (Tr. 524). Another levy was defeated in June of 1977. (Tr. 7400). The Toledo district last passed an additional levy in 1968. Five successive levies have failed.²⁵

²⁵ The Court judicially notices that the Toledo district passed a school levy in November, 1977, while the schools were closed for lack of funds.

(6) Had the Toledo District not closed its schools in 1976 its deficit would have been \$3,454,520. (Plaintiffs' Exh. 1). It carried over \$600,000 in unpaid bills into 1977. (Tr. 533). The closing in 1976 was necessary in spite of the fact that the district cut \$2,300,000 from its budget in 1975. As a result of those cuts, no reading books were purchased and a freeze was placed on the hiring of teaching and non-teaching personnel. (Tr. 542).

(7) The Toledo district anticipated a \$13,000,000 deficit in 1977. (Tr. 7418). The district had to close its schools despite reducing its 1977 appropriation by \$6,713,727. Cost of living adjustments for the staff were eliminated. \$612,000 was saved by cancelling plans for textbook adoptions and replacements and for the purchase of instructional supplies. Among the other planned expenditures which were cancelled was \$986,690 for building repairs. (Plaintiffs' Exh. 303).

(8) The extra costs borne by the Toledo district in 1976 by reason of the urban character of the district totalled \$5,790,000. (Plaintiffs' Exh. 30). Included therein is a \$2,600,000 expenditure from the district's general fund to subsidize the vocational educational program, a \$600,000 expenditure to subsidize transportation and a \$600,000 expenditure to subsidize the lunch program.

(9) The Toledo district's chronic financial distress results from its having less in total state support and local revenue than any large city district in Ohio. In 1975-76 it had only \$1061 per pupil. (Plaintiff's Exh. 245-56). Notwithstanding its low revenue, the Toledo district has the extra problems and costs which all urban, inner city school districts have. (Tr. 548-9). It has to pay higher salaries to attract qualified teachers than do the non-urban districts. (Tr. 545-6). Thus, the irreconcilable pressures of low revenue and high costs combine to produce educational deprivation for the children in the Toledo district.

(10) The Cleveland City School District is the largest school district in the state. Its ADM is approximately 120,000. More than one-fourth of all of the public school children in Ohio who are on welfare attend the Cleveland Schools. (Tr. 1463). Between 30% and 40% of the children in the school system come from families which are on welfare. Of the 90,000 meals which the Cleveland District serves a day to its students, 70% of them are free. (Tr. 1464). Approximately 60% of the students in the Cleveland district represent minority groups of different kinds (Tr. 1465).

(11) The costs borne by the Cleveland School District are the highest of those borne by any school district in the state. (Tr. 1468-1469). Notwithstanding its high cost, the Cleveland District received only \$1,254.00 in total state support and local revenue per student in 1975-76. Twenty-three of the 32 school districts in Cuyahoga County have more dollars per pupil in total state and local support than does the Cleveland district. (Tr. 1466-1467).

(12) The Cleveland district has the highest pupil-teacher ratio of any of the districts in Cuyahoga County. (Tr. 1470). The Cleveland district, with its large concentration of educationally and culturally deprived students needs more teachers per student than do the suburban districts such as Beachwood and Shaker Heights which have very substantially lower pupil-teacher ratios. (Tr. 1471-1472). It would require an expenditure of approximately \$30,000,000 per year to reduce the pupil-teacher ratio in the Cleveland district to the pupil-teacher ratio in the Beachwood district, 14 to 1.

(13) The highest paid school district employee in every public school building in Cleveland is the custodian. The custodian is paid more than the principal. (Tr. 1489).

(14) The Cleveland district is required to spend very substantial amounts of money from its general fund to subsidize programs which the State is supposed to be providing through

categorical funding. It has to spend almost \$2,000,000 per year to subsidize special education (Tr. 1495) and \$2,000,000 per year to subsidize vocational education. (Tr. 1494). It expends approximately \$700,000 a year to subsidize transportation. (Tr. 1496). Vandalism cost the district approximately \$482,000 in the year 1976. (Tr. 1496). Its expenditure for plant security and student security was \$820,000. (Tr. 1490). Its annual cost for attendance services is greater than \$700,000. (Tr. 1498). The Cleveland district's general fund expenditure for the student food program is \$3,000,000 annually. (Tr. 1500). In addition to that, the district spends more than \$400,000 annually on a summer school program which it regards as vital for its inner city school population. (Tr. 1502). The total of these sums is approximately \$10,000,000. This amount represents the additional expenditures which the Cleveland district makes annually in order to deal with extra costs peculiar to an urban district.

(15) As of January 4, 1977, Superintendent Briggs estimated that the final audited figures would show that the Cleveland district completed the 1976 year with a deficit of between \$4,000,000 and \$6,000,000. It carried over to 1977 a great many bills for purchases made in 1976. It totally postponed the purchase of educational materials. (Tr. 1508). Dr. Briggs anticipated that the district would have a \$15,000,000 deficit for 1977.

(16) The Court judicially notices that in October, 1977, the Cleveland School District received the auditor's authorization to close its schools for the remainder of the year and attempted to obtain special legislative permission to borrow against anticipated 1978 receipts in order to avoid the closing. The Court also judicially notices that such legislation was not enacted and that the district's schools have remained open due to the intervention of the United States District Court before which a desegregation case against the Cleveland district is pending.

(17) The Court finds that the Cleveland City School District is so starved for funds that public education in Cleveland is in a condition of virtual chaos.

(18) The Columbus City System has the second largest ADM of any school district in Ohio, approximately 96,000. (Tr. 1380). Next to the Toledo district, it has the lowest total state plus local revenue of any urban district. In 1975-76 it received \$1080 per pupil in total state and local support.

(19) In 1976, due to an acute shortage of funds, the Columbus district cut \$5,800,000 from its budget. It eliminated 100 teachers, 12 administrators, cut the library book budget by \$200,000, the textbook budget by \$125,000, the audio-visual budget by \$238,000, the maintenance budget by \$315,000, and reduced the capital outlay budget by \$700,000. (Tr. 1392).

(20) In November of that year the Columbus district placed an additional 6.2 mill operating levy on the ballot. Despite a massive community campaign in support of the levy, the levy failed.²⁶ (Tr. 1374-1395).

(21) In January of 1977 Superintendent Ellis anticipated that the district would fall \$14,000,000 short of being able to implement the district's planning budget for 1977.

(22) In order to reduce that deficit the Superintendent recommended that the board make massive cuts in curriculum and staff which would result in a savings of more than \$7,000,000 annually.

(23) Those recommendations, which are contained in Plaintiff's Exh. 35, call for the closing of many schools, and the elimination of hundreds of professional personnel and numerous educational programs.

(24) Superintendent Ellis stated that he does not think that when those cutbacks are made the Columbus Public

²⁶ The Court judicially notices that another school tax levy failed in November, 1977.

Schools will offer a level of education which is necessary in order for the district's students to emerge and survive in this competitive world, because the education of those students will be less than adequate. (Tr. 1421-2).

(25) Thus, the Court finds that the Columbus City School District is financially destitute, as are the Cincinnati, Toledo and Cleveland districts, and further finds that the quality of public education in the large urban districts of this state is submarginal. None of these districts can survive under the present system.

(26) The Court finds from the overwhelming and uncontested evidence presented, including the descriptive testimony and unanimous opinions of the school superintendents and other experts on urban education, that the large urban, inner city districts have unique and special problems and substantial extra costs which the non-urban districts do not have. Specific reliance is placed upon the testimony of Superintendent Jacobs and Assistant Superintendents Brokamp and Holloway of the Cincinnati School District (Tr. 1549, 1556, 2675, 1998-2000), Superintendent Dick of the Toledo School District (Tr. 545-6, 553-5, 549-52), Superintendent Briggs of Cleveland School District (Tr. 1471, 1480, 1485, 1501), Superintendent Ellis of the Columbus School District (Tr. 1385, 1418), Superintendent Wheaton of the Mt. Healthy School District (Tr. 391, 411-12), Robert E. Lucas, President of Wilmington College and former Superintendent of Princeton School District (Tr. 1197-1200, 1269-70), Luvern L. Cunningham, Professor of Educational Administration at Ohio State University, an expert on urban education (Tr. 3886-3926), G. Alan Hickrod, Professor of Educational Administration at Illinois State University and Director of the Study for the Center of Educational Finance (Tr. 7461-3), Jay Moskowitz, Assistant Director of the Education Policy Research Institute of the Educational Testing Service (Tr. 3415-18) and Roe L. Johns, Professor Emeritus at the University of Florida and

President of the Educational Finance and Management Institute. (Tr. 4250-52).

(27) The problems of the urban school districts are related to the problems of the cities themselves. Urban problems such as poverty, unemployment and crime adversely affect the school children in inner-city districts. (Tr. 3887). The children from impoverished homes where educational and cultural levels are exceedingly low begin school with educational deficits. School districts which have to overcome those deficits require extra personnel in order to diagnose the deficits and then correct them. Indeed, the districts which have the largest concentration of students with educational and psychological problems should have the lowest ratios of professional staff to pupils. (Tr. 1471). The evidence indicates, however, that those urban districts have pupil-teacher ratios which are among the highest in the state. (Tr. 2954-9). The evidence also shows that the urban districts are among the lowest ranking districts in the state in expenditures for instruction. (Tr. 2954-9). This is the direct result of the fact that the urban districts lack the total financial resources necessary to deliver the educational resources which the children in those districts require. (See findings VI(E)(2, 78), VI(E)(9), VI(E)(11) and VI(E)(18).

(28) The Court also finds that the present system for financing public education in Ohio fails to compensate the urban districts for their substantive extra costs and fails to equip them to deal adequately with their special problems. Specifically, the categorical grants including the grant called Disadvantaged Pupil Impact Aid fall woefully short of compensating the urban districts for their special costs. (Plaintiffs' Exh. 48, 30, Tr. 1418, 1495-1502, 1785-87, 2167-8).

(29) The Court further finds that as a result of that failure many of the children who attend school in the urban districts are substantially disadvantaged educationally.

(30) The Court also finds from the evidence that in order to provide educational opportunity equal to that provided by the non-urban districts, the urban districts in Ohio, specifically the Cleveland, Cincinnati, Toledo and Columbus districts, require substantially more dollars per pupil than do the non-urban districts. Based upon the testimony of the superintendents and other experts, the required additional increment for the urban districts ought to be \$500 to \$1000 per pupil, exclusive of needed expenditures for plant and facility. (Tr. 2185-6, 7461-2, 1515).

(H) Conditions In Certain Well-Financed Suburban Districts

(1) The plaintiffs presented substantial and uncontested evidence through the testimony of superintendents, principals and teachers which shows that, in contrast to the conditions of educational deprivation which exist in a majority of Ohio's school districts including the four largest urban districts, conditions of great educational opportunity exist in certain well-financed suburban school districts. The witnesses who described those conditions are former Princeton Superintendent Robert E. Lucas, now President of Wilmington College and President of the Ohio P.T.A., Superintendent Jack P. Taylor of Shaker Heights, Superintendent Robert L. Holloway of Beachwood, and Indian Hill teacher Charles Neff. The school districts about which those witnesses testified are the Princeton City District in Hamilton County, the Shaker Heights City District, the Beachwood City District in Cuyahoga County, and the Indian Hill Exempted Village District in Hamilton County.

(2) The Beachwood City School District had \$2509 in total state and local support per pupil in 1975-76 and ranked fourth in the state in total state and local support. The Shaker Heights City District had \$1905 in 1975-76 in total state and local

support per pupil and ranked ninth in the state. The Princeton City School District had \$1879 in total local and state support per pupil in 1975-76 and ranked tenth in the state. The Indian Hill Exempted Village District had \$1497 in total state and local support per pupil and ranked 24th in the state in total state and local support, (Plaintiffs' Exh. 245-256). Thus, these four districts ranked among the top 25 districts in the state in total state and local support per pupil in 1975-76.

(3) While there are differences among the four above-mentioned school districts and even disparities among them which are related to their financial capacities, the districts are similar in their ability to deliver comprehensive, high quality educational programs to their students. Two of the districts — Shaker Heights and Princeton — have heterogeneous student populations. In each of those districts more than 30% of the ADM is black. (Tr. 1171, 2836). The Court judicially notices that most of the 377 districts in which widespread educational deprivation exists have pupil populations which are predominantly or exclusively white. Thus, it is clear that the disparities in educational opportunity which exist among the districts in this state are not in any way related to race. They are related to property wealth and income wealth.

(4) The conditions which are similar in the four districts are, *inter alia*, as follows:

(4.1) The curricula are very broad. Numerous courses are offered at every grade level.

(4.2) The ratios of pupils to teachers and pupils to professional staff are low. They are the lowest at the primary level. Class sizes are small. Thus, students receive a great deal of individual attention.

(4.3) The means to diagnose pupil capacity and pupil disability are available at every grade level. In addition, per-

sonnel are available to provide the specialized services in order to aid each pupil to overcome his educational or psychological deficiencies to the extent possible. Such personnel include remedial reading and remedial math specialists and tutors. Students with special problems and needs are thus identified early in their school lives and are given continuing help through the twelfth grade if necessary.

(4.4) Special opportunities are also provided to challenge the gifted children to realize their capacities to the fullest.

(4.5) It is thus the case that the Princeton, Indian Hill, Shaker Heights and Beachwood districts all have the means to afford each child the chance to exploit his individual talents to the fullest.

(4.6) Those four districts also offer a full range of extracurricular opportunities to their students. Those opportunities, which are provided at all grade levels, present children with a wide variety of activities in many sports, music, art, dramatics, and specialized fields representing career opening vistas as well as vocational interests. Music, art and physical education specialists are available at the earliest grade levels. Thus, the children whose motivation is triggered by success in those types of activities are exposed to those interests in the primary grades.

(4.7) Abundant media centers provide pupils with a full range of educational resources and supplies of all types, including library books and facilities for specialized study.

(4.8) The school buildings are spacious, cheerful, well-lighted, carefully arranged for effective teaching and well maintained.

(4.9) The teachers have sufficient in-service training to keep them abreast of the current developments in their course areas and in teaching technique. They also have free time to prepare for class and to confer with one another, and with students and parents.

(4.10) Textbooks are up-to-date. Each student has his own books. In many instances numerous different textbooks covering the same subject are available.

(4.11) Discipline is not a problem of any magnitude. Nor is vandalism. There are enough professional personnel on duty to supervise the students and to avoid the student anonymity which contributes to misbehaviour.

(4.12) A sufficient number of administrative personnel are available to aid classroom teachers in delivering educational services efficiently.

(4.13) Teachers are well paid and are well qualified. A majority of the staff have considerable experience and have masters degrees.

(4.14) Teacher moral is high and student moral is high. A spirit of optimism and achievement prevails.

(4.15) The reason that those districts are favored with such exemplary conditions is that they are blessed with the financial resources to purchase them.

(4.16) The following conditions exist in the Princeton City District in Hamilton County:

(a) The ADM is in excess of 8000. (Tr. 1170). Its pupil population is heterogeneous. It is 30% black. (Tr. 1170). The district has a superintendent, an associate superintendent, three assistant superintendents and numerous supervisors and specialists attached to the central staff. Its one high school has a principal, an associate principal and four assistant principals. Its junior high school has a principal and two assistant principals. Each of its nine elementary schools has a non-teaching principal. (Tr. 1173).

(b) The average experience of the Princeton certificated staff is 14 years. Fifty-three percent of the staff have masters degrees. Some have doctorates. (Tr. 1177).

(c) The ratio of professional staff to students is 17 to 1. The average class size is approximately 20. (Tr. 1178). Princeton also has teacher aides. (Tr. 1178).

(d) The high school physical plant is complete, modern and air conditioned. There are labs of all types, three gymnasiums, numerous athletic fields, an Olympic-sized swimming pool and an auditorium which seats 1500 people. (Tr. 1182-4). All of the buildings are new or redecorated. They are well lighted and carpeted, are equipped with learning centers, gymnasiums and athletic fields. (Tr. 1185).

(e) The Princeton district is unique in that its physical plant has been financed by the levies and is on a pay-as-you-go basis. (Tr. 1186).

(f) The Princeton district provides pre-school education to children beginning at age four. In the case of children whose parents have little interest in education, visiting teachers go to their homes and induce the parents to come to the school and to learn what is expected of them. (Tr. 1197-8).

(g) Princeton has a full kindergarten program (Tr. 1200).

(h) Princeton emphasizes the basic subjects in the primary grades and give pupils considerable attention. Team teaching is used. Learning centers and visual materials are employed. Children write their own books, even in the first grade. (Tr. 1103). Diagnostic testing by specialists is done to determine whether any child is physically or emotionally handicapped. (Tr. 1204).

(i) Princeton has art, music and physical education specialists for the primary grades. (Tr. 1205).

(j) The curriculum in the fourth, fifth and sixth grades continues to emphasize the basic skills. Team teaching with open classrooms is used. There are large learning centers equipped with visual aids, a television, science labs, and other special educational materials. A computer is available to the

students. (Tr. 1207). The curriculum is expanded from the basics and includes an opportunity to learn a foreign language. (Tr. 1208).

(k) The Princeton District offers instructional music beginning in the fourth grade and has a full time music specialist for every 400 to 500 students. (Tr. 1209).

(l) The junior high school curriculum continues to emphasize the basics; however advanced courses in science and mathematics are also offered. Developmental reading is emphasized. There are special mathematics labs and reading labs which provide the students with individual attention. Latin, Spanish and French are offered at the junior high school level. (Tr. 1211-1212).

(m) The art program is very broad. Industrial arts and home economics are offered. (Tr. 1212).

(n) The Princeton Junior High School has a reference library and a learning center equipped with educational materials. (Tr. 1212).

(o) Many extracurricular activities are offered including clubs, sports, student publications, and other activities. (Tr. 1212).

(p) Field trips are an integral part of the junior high school program. (Tr. 1213).

(q) The curriculum at the Princeton High School is extremely broad with over 300 course offerings and another 60 offerings at the vocational school. In the high school, over 56 English courses are offered, 12 art courses, 26 music courses and five foreign languages with 28 different courses. (Tr. 1214). Advanced courses are offered in most of the basic subjects including two years of chemistry and biology. (Tr. 1215).

(r) Princeton offers a broad art and music program in the

high school including a band and various choral groups. (Tr. 1216).

(s) Princeton has a counseling program in the high school with nine full-time counselors including one full-time college counselor and one vocational counselor.

(t) The athletic program at the Princeton High School is very broad with twelve inter-scholastic sports for boys and eight for girls. Princeton has won a number of athletic championships over the past years. (Tr. 1217).

(u) The Princeton School District provides the opportunity for every student to realize his potential to the fullest.

(4.17) The following conditions exist in the Shaker Heights School District in Cuyahoga County:

(a) The student population is approximately 6,800 students and is heterogeneous. Thirty-five percent of the students are black and 65% are white. (Tr. 2836). The district has nine elementary schools, two junior high schools and one senior high school. (Tr. 2843).

(b) The pupil-teacher ratio is 17 to 1 and the average class size is 23.3 students. (Tr. 2843).

(c) The Shaker Heights School District has one superintendent, and three assistant superintendents. The high school has a principal and five assistant principals, the junior high schools each have a principal and three assistant principals and the elementary schools each have a non-teaching principal. The largest elementary school also has an assistant principal. (Tr. 2844-2845).

(d) The buildings are generally well-maintained older buildings with the exception of one junior high school which is new. (Tr. 2845).

(e) The Shaker Heights District has a full kindergarten program which teaches reading readiness. (Tr. 2846).

(f) The elementary schools offer French, music, art and physical education in addition to the basic subjects. Students are given considerable individual attention. There is a special program for students who have difficulty reading and another program for students who have difficulty adjusting to school. (Tr. 2847).

(g) Diagnostic testing to identify special problems is conducted by specialists. (Tr. 2847).

(h) Shaker Heights has specialists in health and physical education, art, music, and reading in each elementary building. (Tr. 2848).

(i) Each elementary school has a media center staffed with a specialist. The media center provides all types of written and visual educational materials for elementary students. (Tr. 2848).

(j) The junior high schools in the Shaker Heights District offer the basic courses. Spanish, French, and Latin are also offered. Special classes are provided for students having adjustment problems. There is a reading seminar for students with reading problems. Specialized "mini courses" are offered in such areas as cooking, woodworking and bridge.

(k) A complete athletic program is offered at the junior high school level including hockey, football, basketball, swimming and track. (Tr. 2848-2849).

(l) Both vocal and instrumental music is offered to junior high school students as well as a full range of other extracurricular activities. (Tr. 2849).

(m) The curriculum at the Shaker Heights High School is very complete. All of the basic courses are offered. French, German, Spanish and Latin are also offered. Vocational courses are available. (Tr. 2851).

(n) A full range of extracurricular activities is available from drama clubs to athletics. A complete athletic program is provided. (Tr. 2851).

(o) Tutorial help is available at all levels for students who have educational difficulties. (Tr. 2853).

(p) All textbooks are replaced every five years. Up-to-date supplementary books and materials are also provided. (Tr. 2854).

(q) Fall and mid-year conferences on specific educational subjects are held each year for the benefit of the teachers. Consultants are brought in regularly to meet with the staff and discuss various specific topics. The professional staff is encouraged to attend seminars and conferences at the district's expense. Teachers are given the opportunity to visit other classrooms, consult with other teachers and work with supervisors. (Tr. 2854-2855). All teachers have free time during the school day to consult, rest or prepare for class. (Tr. 2856).

(r) Approximately two thirds of the teachers in the Shaker Heights District have earned masters' degrees or completed work beyond a masters' degree. (Tr. 2856).

(s) Discipline is not a serious problem. There is no vandalism in the Shaker Heights District. (Tr. 2857-2858).

(t) The district has a district wide media center which carries most of the materials published for use by students and teachers. It is connected electronically to the major universities in Ohio so that other materials can be brought in. (Tr. 2858).

(u) The high school offers a special program for students with special problems. This "school within a school" has a very low pupil-teacher ratio (5 or 6 students to one teacher). Students enrolled in the program spend approximately one-half of their time in the school within a school. (Tr. 2859-2860). These students earn a regular high school diploma and participate in all sports and other extracurricular activities. (Tr. 2861).

(4.18) The following conditions exist in the Beachwood School District in Cuyahoga County:

(a) The ADM is 1,729. (Tr. 3720). The emphasis of the education program is to meet the individual needs of each child including the atypical child. For this reason the average class size in the elementary schools is 20. (Tr. 3717). The pupil-teacher ratio in the district is slightly less than 14 to 1. (Tr. 3716). The district has specialists for all children with learning disabilities including those who do not meet the requirements for categorical programs. The district has a program for gifted children. (Tr. 3718). The district has psychologists to diagnose the special needs of the children. (Tr. 3719).

(b) The Beachwood District has a superintendent, two assistant superintendents, one principal in each school, a director of pupil personnel, two assistant principals in the high school and one assistant principal in the middle school. (Tr. 3724).

(c) The district has specialists in physical education, music, and art in the elementary grades. It has a special art program in the elementary schools entitled "Artists In Residence" in which local artists work with children in order to expand the students' interests. (Tr. 3719).

(d) Music instruction is offered from the kindergarten level to the high school level. (Tr. 3720).

(e) French and Spanish are offered to students for the first time in the fourth grade. (Tr. 3720).

(f) Beachwood has a special program in the elementary schools entitled "Quest" in which teachers develop independent units in areas of student interest. (Tr. 3721).

(g) Beachwood has a dramatics program including a dramatics specialist in the elementary and middle schools. (Tr. 3727).

(h) French and Spanish are offered in the fourth grade to the twelfth grade and Hebrew is offered from the ninth grade to the twelfth grade. (Tr. 3728).

(i) Beechwood has an architecturally open school for the 6th, 7th and 8th grades in which an open educational program with team teaching is offered. (Tr. 3723-3724).

(j) A complete range of courses is offered in the high school including advanced science and mathematics courses. (Tr. 3729). The English program is an elective program with courses such as the following offered: Modern American Authors, Journalism, World Literature, Issues in Women, Creative Writing, Mythology, Grammar Review and the Bible as Literature. (Tr. 3730-3731).

(k) Beachwood offers a full range of extracurricular activities including sports and intramurals. The intramural program begins in the middle school. Football, soccer, golf, tennis, wrestling, basketball, track, swimming, and baseball are offered at the high school level. Beachwood has won several state wrestling championships. (Tr. 3724-3726).

(l) The Beachwood District has an alternative school in the high school in which the students plan and conduct their own educational program. (Tr. 3722).

(m) The Beachwood District participates in a program with the Greater Miami, Florida, School System in which children attend an Isreali high school for nine weeks. (Tr. 3728).

(n) There is a computer terminal in the high school for use in the science and mathematics courses. (Tr. 3732-3733).

(o) In-service training is provided for teachers throughout the year. All teachers have free time during the day to consult with one another and to prepare for class. (Tr. 3722-3723).

(p) The Beachwood District is able to provide all of the educational materials, library books, textbooks and other re-

lated items required to meet the educational needs of its students. (Tr. 3721, 3735).

(4.19) The following conditions exist in the Indian Hill Exempted School District in Hamilton County:

(a) The ADM is approximately 3,000. There are two primary schools with grades kindergarten through three, two middle schools with grades four through six, one junior high school with grades seven and eight and a senior high school. (Tr. 2737, 2739).

(b) The kindergarten through grade three program employs a multitude of educational techniques and materials. There are specialists in music, art and physical education. Each primary school has a reading specialist. (Tr. 2740).

(c) The middle school program offers the same educational services as the primary school program. There is a guidance counselor in each middle school. Varied extracurricular activities are offered. The schools are organized in an open classroom concept. The children are tested to diagnose individual problems and they receive a great deal of individual attention. Each middle school has a large media center equipped with audio visual equipment as well as books. (Tr. 2740-2741).

(d) Music and art specialists work with the elementary school children. Instrumental music instruction is available in the middle grades. (Tr. 2742).

(e) The junior high school curriculum is specialized into department areas. Biology and physical science are offered to seventh and eighth grade students as well as basic courses in English, social studies, health and language arts. (Tr. 2743).

(f) Physical education, art, music, industrial arts, and home economics are offered to both boys and girls at the junior high school level. (Tr. 2743). In the junior high school art program, the students work in every media includ-

ing sculpture and pottery. (Tr. 2747). Both instrumental and vocal music are taught in the junior high school. The orchestra and the band perform concerts. There are also stage bands, jazz bands, marching bands and combos. (Tr. 2748).

(g) Interscholastic athletic competition in football, basketball and wrestling is begun in the junior high schools. Basketball, field hockey, soccer, bowling and track are also available. (Tr. 2744).

(h) The Indian Hill High School curriculum is extremely broad. Thirty-five to 40 different English courses are offered including courses in film, stage production, drama, children's literature, The English Bible, Music in the 20th Century, English Literature and American Literature. (Tr. 2744-2745). Courses in earth sciences, biological sciences, physics and chemistry are offered and include field trips and laboratory sessions. There are science tutorial programs for students who desire to pursue specialized research. The social science department offers courses ranging from world geography to problems of democracy with special classes in Russian history. Five different foreign languages are taught — French, Spanish, German, Latin and Russian. (Tr. 2746-2747).

(i) A student who desires to learn a sixth language such as Greek or Hebrew is provided that opportunity. A person from the community is provided to work with the student. (Tr. 2746).

(j) There is an opportunity for students to obtain credit for courses beyond the 12th grade level by taking courses at the University of Cincinnati. (Tr. 2746).

(k) Private tutoring is available during school hours to Indian Hill students. (Tr. 2746).

(l) The high school art program is carefully formalized beginning in one-dimensional art, then moving to two-dimensional and then to three-dimensional art. (Tr. 2747). The music program is very broad with both vocal and instrumental

music offered. The high school has an orchestra, marching band, and several other bands and musical combos which students can participate in. (Tr. 2748).

(m) The high school sports program is very broad. Cross country, track, golf, swimming, wrestling, football, basketball, baseball, field hockey, lacrosse, speed ball and rugby are offered. There are teams in cross country, track, golf, swimming, wrestling, football, basketball, baseball, and field hockey. (Tr. 2748-2749).

(n) The pupil-teacher ratio at Indian Hill is between 21.5 and 22 students to one teacher. (Tr. 2749).

(o) Teachers have free time during the school day to rest, prepare for classes and consult with other teachers and students. (Tr. 2751). There is no significant teacher fatigue. (Tr. 2752). Teachers may take advantage of the district's adult education courses at no cost. The Board of Education pays for the graduate courses in which the teachers enroll. Two half days per year are set aside for professional speakers who speak to the whole faculty. Teachers may request that a special workshop be held on a specific educational topic of their choice. Teachers are permitted to attend conferences including the national conferences. (Tr. 2753-2754).

(p) Teacher morale at Indian Hill is very good. The teachers enjoy the students and the community. (Tr. 2755).

(q) Every grade from kindergarten to twelve is taken on field trips. (Tr. 2756).

(r) A special experimental program entitled TLC, teacher learning cross matching, is presently in effect in all schools except the high school. This program enables the teacher to identify a child's preference in learning. (Tr. 2756-2759).

(s) Sixty-two to sixty-five percent of the Indian Hill teachers have masters' degrees. (Tr. 2760). Fifty percent of the teachers pursue their education beyond the master's degree. (Tr. 2761).

(t) Student discipline is not a serious problem. There is no criminal behavior. There is no fear among the students or teachers at Indian Hill. (Tr. 2763).

(u) The district has eight guidance counselors, four in the high school, two in junior high school and one in each elementary school. The district also has a full-time psychologist who counsels and tests students. (Tr. 2764).

(v) There are a sufficient number of up to date textbooks for each child in the Indian Hill School System. Textbooks are replaced every five years, if necessary. (Tr. 2765-2766).

(w) Each school has a large media center staffed with a media specialist. The media center has books as well as other educational materials. The district exceeds the American Library Association's recommendation for the number of library books per pupil. (Tr. 2766-2767).

(x) Every school has a trained reading specialist. The district is able to identify learning disabilities at an early age and is able to provide the child with specialized help. (Tr. 2767). The average class size of the remedial reading classes is between five and seven. (Tr. 2768).

(y) The Indian Hill School System offers each child the opportunity to develop his talents to the fullest extent possible. (Tr. 2774).

(I) Vast Disparities Exist Among Ohio's School Districts In (1) Total State And Local Support Per Pupil, (2) Expenditures Per Pupil For Instruction and (3) The Quantity and Quality Of The Educational Services Provided

(1) Disparities in Total State And Local Support And Generally Low Level Of Support

(1.1) The school children who are enrolled in those districts which had total state and local support of less than \$1000 per pupil in 1975-76, received substandard educational services that year (Finding VII(F)(2.6)) and may be presumed to be receiving substandard educational services at the present time since school district costs are escalating at a greater rate than are school district revenues. (Finding VI(C)(7)). Sixty-two percent of Ohio's students were enrolled in districts which had less than \$1100 per pupil in total state and local support in 1975-76 (Finding VI(A)(14)) and they may similarly be presumed to be currently receiving educational services of the same level they received in 1975-76.

Many education experts²⁷ testified that small differences in dollars per pupil do not equate to meaningful differences in educational services offered. Therefore, the Court concludes that a substantial majority of Ohio's pupils (the 62% enrolled in districts which had less than \$1100 total support per pupil in 1975-76) are presently receiving less than adequate educational services and opportunities.

(1.2) This finding is reinforced by the record facts that the Cincinnati district is able to deliver only a submarginal program with \$1163 per pupil (Finding VII(G)(2.1)) and that

²⁷ Harold Howe II, Vice President of Education and Research for the Ford Foundation, (Tr. 4454); G. Alan Hickrod, Professor of Educational Administration at Illinois State University and Director of the Center for the Study of Educational Finance, (Tr. 7460); R. L. Johns, Professor Emeritus at The University of Florida and President of the Educational Finance and Management Institute, (Tr. 4258-4260); Robert E. Lucas, President of Wilmington College. (Tr. 1159-1160).

the Cleveland district is not able to deliver a better program (indeed cannot avoid a \$15,000,000 current deficit) with \$1250 per pupil. (Finding VII(G)(15)). Even though the large urban districts have slightly more dollars per pupil than do the poor rural districts, their extra costs place them at the same poverty level of services as the poor rural districts.

(1.3) It is to be noted that only 2% of the students in the state of Ohio attend school in the districts which received \$1500 or more per pupil in total support in 1975-76. The four suburban districts (VII(H)) whose conditions and services are exemplary of well-financed districts have total state and local support in a range of approximately \$1500 per pupil to more than \$2500 per pupil. These districts are not spending their funds frivolously. They are purchasing educational resources which are necessary for the provision of well-rounded educational programs. (Finding VII(H)).

(1.4) The Court notes also that the plaintiffs have presented a carefully documented and costed-out model of a high quality school system which requires more than \$1750 per pupil to operate on a low-intensity basis in the 1976-77 school year. (Tr. 4345-4436, Plaintiffs' Exh. 290). It is also noteworthy that numerous educational experts²⁸ have stated that an amount between a low of \$1500 per pupil and a high of \$2500 per pupil is necessary in order to provide educational offerings which are "adequate", "satisfactory", "high quality",

²⁸ Harold Howe II, Vice-President of Education and Research for the Ford Foundation, (Tr. 4454), R. L. Johns, Professor Emeritus at the University of Florida and President of the Educational Management Institute, (Tr. 4248); Robert H. Wessel, Professor of Economy and Administration at the University of Cincinnati, (Tr. 3219); Walter G. Hack, Professor of Educational Administration at the Ohio State University, (Tr. 4517-4520); John H. Grate, Coordinator of Planning and Development for the Cincinnati Public Schools (Tr. 4382); James D. Stock, Superintendent of Lebanon City Schools, (Tr. 4432); Carl H. Heimerdinger, Clerk-Treasurer of the Cincinnati Board of Education, (Tr. 3219); Paul W. Briggs, Superintendent of the Cleveland City Schools (Tr. 1515) and Raymond J. Brokamp, Assistant Superintendent of Cincinnati Public Schools. (Tr. 2185-2186).

and "thorough and efficient", depending upon whether the district's educational problems and costs are those of the average district or of the high intensity district. (Tr. 4454, 4248, 3219, 4517-4520).

(1.5) All of the above-noted considerations militate toward the conclusion that, while it is not possible to determine precisely how many dollars per pupil are required in any district in order to provide reasonably satisfactory educational offerings, whether that figure is \$1400 or \$1500 as measured by 1975-76 dollars or \$1600, \$1700 or \$2250 as measured by 1977-78 dollars, it is clear that the school districts in this state generally fall far short of having sufficient resources to provide a satisfactory level of education to the overwhelming majority of Ohio's school children, and the Court so finds. Moreover, the present finance system falls far short of funding a system of public schools which can comply with the State Board of Education's minimum standards. That fact alone supports the finding that, by and large, the school children in Ohio are getting educationally shortchanged.

(2) Vast Disparities Exist Among Ohio's School Districts In Expenditures Per Pupil For Instruction

(2.1) Instruction is the heart of the educational process and expenditures for instruction determine the nature of the program and services which a child will receive. Very great disparities in expenditures for instruction exist among the school districts of Ohio. These disparities are directly related to the disparities existing among the districts in total state and local support per pupil. See Section VIII-II(A).

(2.2) When various components of the per pupil expenditures²⁹ for instruction in 1974-75 within school districts located

²⁹ Expenditures of federal funds are excluded since their purpose is supplementary only. See Finding 2.20 and footnote 33.

in Ohio's eight largest metropolitan counties³⁰ are analyzed, a similar pattern of disparities in expenditures based on disparities in total support is evident. The amount of expenditure for each instructional component is directly linearly related to the amount of total state and local support per pupil which the school district has. (Plaintiffs' Exh. 100-138).³¹

(2.3) Within the eight metropolitan counties, there were 141 school districts which enrolled 49% of Ohio's public school students in 1974-75. Among those districts, there were significant disparities in available revenues, expenditures and educational services provided. (Tr. 2946, 2949).

(2.4) (a) Among the 141 districts, total state plus local revenues per pupil ranged from a low of \$732 to a high of \$3,222. (Plaintiffs' Exh. 122I, 122J, 122K).

(b) The eight districts in the sample which ranked lowest in total support had between \$732 and \$764 in total support per pupil. (Plaintiffs' Exh. 122K).

(c) The eight districts ranked highest had total support per pupil ranging from \$1692 to \$3222 per pupil. (Plaintiffs' Exh. 122J).

³⁰ Cuyahoga County, Franklin County, Hamilton County, Lucas County, Mahoning County, Montgomery County, Stark County and Summit County.

³¹ These exhibits were compiled by John H. Grate from data provided by the State of Ohio Department of Education. The sources for that data from the State of Ohio Department of Education are Form 25, Annual Financial Report, 1974-75; Form SF-12, 1974-75 and 1975-76; and Form SF-1, 1974-75 and 1975-76. This data was analyzed by John H. Grate, Coordinator of Planning and Development in The Department of Research and Development for the Cincinnati Public Schools. The exhibits were based on the 1974-75 year since that was the most recent year for which comprehensive data was available. Findings based on these exhibits are relevant, however, because disparities in expenditures for instruction which existed in 1974-75 continued to exist in 1975-76 and will continue to exist as demonstrated in Plaintiffs' Exh. 178-245. Refer to Finding VIII-II (A) (87).

(d) The eight large city districts,³² which enrolled 21% of the state's pupils, had total support per pupil ranging from \$964 to \$1288. (Plaintiffs' Exh. 122I).

(2.5) (a) Among all districts, per pupil total expenditures for instruction from the general fund ranged from a low of \$504 to a high of \$1916. (Tr. 2953, Plaintiffs' Exh. 110, reproduced at end of section). The weighted mean ("average") expenditure per pupil for instruction was \$729. (Tr. 2957).

(b) Total expenditures per pupil for instruction for the eight districts ranking lowest in that category ranged from \$504 to \$537. (Plaintiffs' Exh. 110K).

(c) For the eight districts ranking highest, the range was from \$1059 to \$1916 per pupil. (Plaintiffs' Exh. 110J).

(d) Among the eight large city districts, total expenditures per pupil for instruction ranged from \$676 to \$842. (Plaintiffs' Exh. 110I).

(2.6) (a) Pupil-teacher ratios varied greatly among all districts in the eight counties – from a low of 7:1 to a high of 26:1. (Plaintiffs' Exh. 110).

(b) In the eight districts ranking lowest in total expenditures per pupil for instruction, pupil-teacher ratios ranged from 22:1 to 25:1. (Plaintiffs' Exh. 110K).

(c) In the eight districts ranked highest, pupil-teacher ratios ranged from 7:1 to 18:1. (Plaintiffs' Exh. 110J).

(d) Statistically, there is a very strong and significant negative correlation between expenditures for instruction and pupil-teacher ratios. This inverse relationship means that higher expenditures for instruction are strongly related to lower pupil-teacher ratios. (Tr. 2956).

³² Cleveland, Columbus, Cincinnati, Toledo, Youngstown, Dayton, Canton and Akron.

(e) The eight large city districts are an exception to this pattern, however. Their pupil-teacher ratios, which range from 21:1 to 26:1, (Plaintiffs' Exh. 110I) are higher than their total expenditures for instruction would suggest. (Tr. 2955).

(2.7) As graphically illustrated in Plaintiffs' Exh. 112, 113 and 123 (reproduced at end of section), the eight large city districts, despite higher revenues and expenditures for instruction, are generally grouped with the low expenditure, low revenue districts in pupil-teacher ratio. In fact, in some cases such as Cincinnati, pupil-teacher ratios are even higher than in districts with much lower expenditures. This happens because other needs of the large city (discipline, security, safety) drain resources otherwise available to the city school districts. In addition, a city district has higher basic costs such as salaries and fringe benefits. (Tr. 2954, 2958, 2959, Plaintiffs' Exh. 110, 111, 112, 113, 123, reproduced at end of section).

(2.8) The greatest number of pupils in the eight metropolitan counties attend schools in districts with a pupil-teacher ratio of 23:1 or greater. Plaintiffs' Exhibit No. 111 graphically demonstrates this. Large city districts fall into higher pupil-teacher ratio groupings and contribute significantly to the large number of students in these categories.

(2.9) There are significant variations in the number and experience of teaching personnel among the districts. (Tr. 2919, 2949, Plaintiffs' Exh. 131). Generally, districts with higher expenditures per pupil for instruction tend to have teachers with more training and more experience. (Tr. 2977, Plaintiffs' Exh. 133).

(2.10) There are great expenditure variations within the districts located in each of the eight metropolitan counties for instructional services and other components of education. In general, when contrasting total revenues and expenditures for instruction, there is a strong, positive correlation between high revenues and high expenditures for instruction. Each of the

eight large city districts, however, is unable to spend as much for instruction than its' revenues would suggest due to the high cost of providing other services unique to large, metropolitan school districts. (Tr. 2958).

(2.11) There are significant variations in expenditures for textbooks, libraries and educational supplies. Districts with the highest revenues have the highest expenditures per pupil for those items and districts with the lowest revenues have the lowest expenditures. (Tr. 2998, Plaintiffs' Exh. 110).

(2.12) Plaintiffs' Exhibits 110A through 110K demonstrate the direct linear relationship between general fund expenditures and expenditures for various educational services. These exhibits contrast the expenditures of each of the large city districts with the four highest expenditure districts and the four lowest expenditure districts in each of the eight counties. It is evident that in each of the counties the large city districts have expenditure characteristics more closely related to the low expenditure districts than to the high expenditure districts in the same county.

(a) For example, in Cuyahoga County, Cleveland has a per pupil expenditure for instruction of \$740; the four lowest expenditure districts have a range of \$675 to \$701 and the four highest expenditure districts have a range of \$1198 to \$1916. The pupil-teacher ratio for the same districts was 25:1 for Cleveland, with a range of 21:1 to 23:1 for lowest expenditure districts and a range of 17:1 to 7:1 for the highest expenditure districts. (Plaintiffs' Exh. 110A).

(b) Hamilton County exhibits a similar pattern. The expenditures per pupil for instruction in Cincinnati were \$676. The expenditures per pupil for instruction in the low expenditure districts range from \$570 to \$591 and in the high expenditure districts range from \$950 to \$1077. The pupil-teacher ratio for Cincinnati was 26:1. The pupil-teacher ratio in the low expenditure districts a ranged from 23:1 to 25:1 and in high expenditure districts ranged from 17:1 to 20:1. (Plaintiffs' Exh. 110C).

(2.13) There is also a direct linear relationship between total state and local revenue per pupil and the educational service expenditures per pupil for salaries, textbooks, libraries, educational supplies, teacher aides and the pupil-teacher ratio. (Plaintiffs' Exh. 122A-122K).

(2.14) There is a similar linear relationship between the amount of total state plus local revenue and pupil-teacher ratio as that between general fund expenditures for instruction and pupil-teacher ratio. (Tr. 2973, Plaintiffs' Exh. 122). It is an inverse relationship *i.e.*, the higher the revenue, the lower the pupil-teacher ratio. Conversely, the lower the revenue, the higher the pupil-teacher ratio. (Tr. 2973). As previously noted, the large cities have pupil-teacher ratios higher than their revenues would suggest.

(2.15) Personnel salaries represent the largest and most significant portion of expenditures per pupil for instruction. (Tr. 2976-2977). High per pupil expenditures for salaries of instructional personnel results from one or more of three factors: high teacher salaries, teachers at the upper level of the salary schedule or a large numbers of teachers in relation to the number of the children in the school district. Statistical analysis of the data for the eight metropolitan counties indicates that pupil-teacher ratio and per pupil expenditure for salaries of instructional personnel are very tightly related. Low pupil-teacher ratio can be expected in districts with high per pupil expenditures for salaries of instructional personnel and low expenditures in this category will result in a higher pupil-teacher ratios. (Tr. 2977, Plaintiffs' Exh. 124).

(2.16) High general fund total revenues, high general fund expenditures for instruction, and high expenditures for instructional salaries are all closely related and correlate highly with low pupil-teacher ratios. Conversely children in districts with low general fund total revenues, low general fund expenditures for instruction and low expenditures for instructional salaries will attend schools with high pupil-teacher ratios and large classes. (Tr. 2976-2977). Plaintiffs' Exhibit

No. 124 (reproduced at end of section) demonstrates that the large city school districts in Ohio are similar to the low expenditure districts in expenditures for instructional salaries and in pupil-teacher ratio.

(2.17) Plaintiffs' Exhibit 125 (reproduced at end of section) demonstrates the relationship between expenditures per pupil for textbooks and pupil-teacher ratio. It demonstrates the relative position of the metropolitan districts, the high expenditure districts and the low expenditure districts. High expenditure districts spend four times as much on textbooks as low expenditure districts and twice as much or more than the large city districts.

(2.18) There are also disparities between the city and the low expenditure districts on one hand and the high expenditure districts on the other hand in the expenditures for libraries. Plaintiffs' Exhibit No. 126 (reproduced at end of section) illustrates that high expenditure districts greatly outspend big city and low expenditure districts in that cities and the low expenditure districts spent \$20 or less per pupil on library services and the high expenditure districts are able to spend \$45 or more per pupil on library services. The mean expenditure for the eight metropolitan counties was \$21.06 with a range of \$2.81 up to \$121.81. Per pupil expenditures on library services are also inversely related to pupil-teacher ratio. (Tr. 2979, Plaintiffs' Exh. 126).

(2.19) There is also an inverse relationship between pupil-teacher ratio and expenditures for instructional supplies and teacher aids. The city districts' expenditures are similar to the low expenditure districts rather than to the high expenditure districts. (Tr. 2980-2982, Plaintiffs' Exh. 127 and 128, reproduced at end of section).

(2.20) There is no significant relationship between expenditures from categorical state and federal programs and a lower pupil-teacher ratio. The dollars received by a district from other than general fund sources do not make a signifi-

cant difference in the pupil-teacher ratio in the regular instructional program. (Tr. 2882, Plaintiffs' Exh. 129). This is the result of the specific prohibitions against comingling of these special programmatic funds with the general revenue funds of the district. Federal and state guidelines also usually target the resources to a limited group of children. The receipt of substantial amounts of federal funds and special state funds by the large cities has produced no significant difference in the pupil-teacher ratio in the regular instructional program. (Tr. 2983, Plaintiffs' Exh. 130).³³

(2.21) High revenue, high expenditure districts are able to employ teachers with more experience and to pay them higher salaries than the low revenue, low expenditure districts. (Tr. 2986, Plaintiffs' Exh. 131). This pattern exists in each of the eight metropolitan counties. (Plaintiffs' Exh. No. 131A-H and 132A-H). The difference between the high expenditure districts and the low expenditure districts is approximately \$2,000 to \$3,000 in average teacher salaries and three to five 5 years in average years of experience of teachers. (Plaintiffs' Exh. 131 I-K and 132 I-K). Since the quality of the teaching staff is critical to the educational process, the disparities related to salaries and experience of teachers are educationally significant. (Tr. 2987-2989).

(2.22) Large city districts are similar to the high revenue, high expenditure districts in terms of the years of experience of their teachers. However, the salaries of the teachers in large city districts are lower than the salaries of the teachers in high expenditure, high revenue districts. (Plaintiffs' Exh. 131 I-K and 132 I-K).

³³ Harold Howe II, Vice President of the Ford Foundation for Education and Research and former Commissioner of Education in the United States Department of Health, Education and Welfare, testified that the purpose of federal education funds is to provide very specific aid for children with very specific needs. The purpose of federal funds is not to raise the level of the general educational programs in the state. (Tr. 4452-4453).

(2.23) The degree status of certificated personnel as it relates to expenditures per pupil for instruction, and state plus local revenue per pupil, indicates that districts with high revenue and high expenditures for instruction have teachers and other certificated personnel with higher levels of degrees. (Tr. 2990-2991, Plaintiffs' Exh. 133-K and Plaintiffs' Exh. 134A-K).

(2.24) The pattern demonstrated by all of these exhibits (Plaintiffs' Exh. 100-138) is that the districts which have funds spend them on the services and supplies which are educationally the most important — more instructional personnel, textbooks, library services, instructional supplies and teacher aides. (Tr. 2981).

(2.25) The tables, graphs and other analyses introduced by the plaintiffs conclusively demonstrate that districts with higher state plus local revenues have higher expenditures for instruction and lower pupil-teacher ratios. Such districts staff their schools with more teachers and other professional personnel with more experience, more advanced degrees and pay them higher average salaries. These same districts spend more per pupil on textbooks, library services, and instructional supplies. (Tr. 2998).

(2.26) Children who reside in districts which suffer from low state plus local revenues suffer lower expenditures for instruction and higher pupil-teacher ratios. Their schools are staffed with fewer teachers and other professional personnel with fewer years of experience, less advanced degrees and who are paid lower average salaries. Their schools spend less per pupil on textbooks, library services and instructional supplies.

(2.27) Children in large city districts experience educational situations more closely related to the situations of children in the districts with low state plus local revenues and low expenditures for instruction than to the situations of children in the districts with high revenues and high expenditures.

CINCINNATI PUBLIC SCHOOLS
GENERAL FUND PER PUPIL EXPENDITURES FOR INSTRUCTION
SELECTED* DISTRICTS IN EIGHT METROPOLITAN COUNTIES IN OHIO, 1974-75

Source of Data: Ohio Department of Education

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION						
	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Pupil Teacher Ratio
LARGEST DISTRICT IN COUNTY						
Cuyahoga County	\$ 740	681	8	30	9	9
Cleveland City	125227					
HIGH EXPENDITURE DISTRICTS IN COUNTY						
Bratenahl Local	1916	1708	2	122	12	19
146						0
Cuyahoga Heights Local	1449	1195	23	44	40	22
954						70
Beechwood City	1335	1064	5	102	54	19
1880'						79
Shaker Heights City	1198	1022	10	59	87	0
6552						9
LOW EXPENDITURE DISTRICTS IN COUNTY						
Olmsted Falls Local	675	604	9	13	16	0
2941						0
North Olmsted City	689	642	7	23	11	0
7851						2
Garfield Heights City	694	632	8	19	10	7
4950						13
Parma City	701	642	1	25	9	20
23203						2
						22

*Selected on the basis of total per pupil expenditure for instruction from the General Fund.

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION

	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Teacher Aides	Other	Pupil Teacher Ratio
Franklin County	\$ 716	660	10	16	20	5	0	23
LARGEST DISTRICT IN COUNTY								
Columbus City	929	826	5	39	38	0	0	18
Granview Heights City 1564	881	795	9	35	24	5	2	19
Worthington City 6488	820	731	14	28	29	0	0	19
Bexley City 2418	760	706	2	25	19	0	0	20
Upper Arlington City 7848								
LOW EXPENDITURE DISTRICTS IN COUNTY								
Plain Local 1170	537	496	7	14	6	0	0	24
Madison Local 6480	547	502	10	17	9	0	0	24
Canal Winchester Local 1119	569	527	6	11	15	0	0	24
Washington Local 1854	592	539	8	19	14	0	0	22

147. (b)

PLAINTIFF EXH. No. 110B

207a
PLAINTIFFS' EXHIBIT No. 110B

208a
PLAINTIFFS' EXHIBIT No. 110C

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION

	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Teacher Aides	Other	Pupil Teacher Ratio
Hamilton County	\$ 676	636	7	11	14	1	1	26
LARGEST DISTRICT IN COUNTY								
Cincinnati City 66722	1077	996	12	29	21	0	0	17
Highland City 934	1051	957	26	39	11	9	0	17
Princeton City 8793	951	806	17	31	43	29	2	19
Marion City 1902	950	872	5	44	22	2	0	20
Indian Ex. Village 3215								
LOW EXPENDITURE DISTRICTS IN COUNTY								
North College Hill City 2007	570	547	3	11	5	0	5	25
Southwest Local 3008	576	517	5	13	8	6	0	23
Mount Healthy City 7376	580	549	8	12	8	0	0	23
Northwest Local 14326	591	530	8	15	8	0	0	24

147. (c)

PLAINTIFF EXH. No. 110C

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION

Pupil Teacher Ratio	Other	Teacher Aides	Teacher Supplies	Library	Text Books	Teacher Salary	Total
LARGEST DISTRICT IN COUNTY							
Toledo City 55425	\$ 680	634	6	6	13	7	7
HIGH EXPENDITURE DISTRICTS IN COUNTY							
Ottawa Hills Local 948	1078	974	8	16	32	4	20
Washington Local 10550	791	715	3	11	23	14	0
Sylvania City 7900	748	679	6	18	24	0	0
Oregon City 4843	713	654	8	23	19	4	0
LOW EXPENDITURE DISTRICTS IN COUNTY							
Springfield Local 3358	533	493	1	8	11	0	0
Anthony Wayne Local 3471	591	529	7	19	13	3	0
Maurine City 4016	694	630	8	22	26	4	0

209a

PLAINTIFFS' EXHIBIT No. 110D

147. (d)

210a

PLAINTIFFS' EXHIBIT No. 110E

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION

Pupil Teacher Ratio	Other	Teacher Aides	Teacher Supplies	Library	Text Books	Teacher Salary	Total
LARGEST DISTRICT IN COUNTY							
Youngstown City 21069	\$ 804	768	7	12	15	0	0
HIGH EXPENDITURE DISTRICTS IN COUNTY							
Campbell City 2098	705	655	16	7	11	11	0
Lowellville Local 519	678	638	8	4	19	0	0
Boardman Local 6478	656	616	7	8	15	3	0
Struthers City 2840	634	587	7	15	17	0	0
LOW EXPENDITURE DISTRICTS IN COUNTY							
Western Reserve Local 1044	514	475	11	12	11	0	0
Springfield Local 1757	522	483	7	6	15	0	0
West Branch Local 3106	540	506	4	15	9	0	0
South Range Local 1581	554	497	7	20	18	5	0

147. (e)

PLAINTIFF EXH. No. 110F

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION

	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Teacher Aides	Other	Pupil Teacher Ratio
Montgomery County	\$ 842	780	10	19	22	3	0	21
LARGEST DISTRICT IN COUNTY								
Dayton City 44344								
HIGH EXPENDITURE DISTRICTS	1059	1003	10	9	31	0	0	18
Oakwood City 1867								
Kettering City 13005	903	829	13	22	19	0	10	19
Mad River Local 6871	731	661	11	11	26	0	0	20
West Carrollton City 5396	697	640	12	14	18	6	1	23
LOW EXPENDITURE DISTRICTS IN COUNTY	573	521	4	7	5	16	0	24
New Lebanon Local 1946								
Vandalia-Butler City 5037	575	542	3	18	8	0	0	24
Brookville Local 1942	579	513	6	22	16	8	0	24
Northmont Local 7046	581	517	10	10	18	0	8	24

211a

PLAINTIFFS' EXHIBIT No. 110F

147. (f)

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION

	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Teacher Aides	Other	Pupil Teacher Ratio
Stark County	\$ 751	712	6	15	16	0	0	22
LARGEST DISTRICT IN COUNTY								
Canton City 17384								
HIGH EXPENDITURE DISTRICTS IN COUNTY	854	803	4	19	16	0	2	18
Canton Local 3750								
Massillon City 6380	754	690	8	17	11	0	24	23
Alliance City 5460	660	602	10	18	19	0	8	21
North Canton City 4659	656	616	4	16	13	1	1	22
LOW EXPENDITURE DISTRICTS IN COUNTY	504	471	6	3	5	3	5	24
Lake Local 2773								
Sandy Valley Local 1952	506	479	3	7	10	0	0	23
Minerva Local 2855	514	483	4	7	8	0	0	25
Northwest Local 2165	536	511	3	7	6	0	0	24

212a

PLAINTIFFS' EXHIBIT No. 110G

147. (g)

214a

PLAINTIFFS' EXHIBIT No. 110I

213a

PLAINTIFFS' EXHIBIT No. 110H

Summit County	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Teacher Aides	Other	Pupil Teacher Ratio
LARGEST DISTRICT IN COUNTY Akron City 47958	\$ 727	644	10	12	11	6	35	23
HIGH EXPENDITURE DISTRICTS IN COUNTY								
Woodridge Local 1687	658	770	3	38	29	0	0	19
Hudson Local 3451	814	720	5	32	25	16	0	19
Burberton City 6363	760	700	17	13	13	10	12	22
Mogadore Local 1302	740	665	7	30	17	0	0	19
LOW EXPENDITURE DISTRICTS IN COUNTY								
East Franklin Local 2641	586	538	3	19	12	3	0	31
Norton City 3862	606	567	4	10	13	8	0	23
Tallmadge City 4007	609	563	4	16	9	1	6	24
Springfield Local 4955	613	567	5	16	17	0	0	24

LARGEST DISTRICT IN EACH COUNTY	County	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Teacher Aides	Other	Pupil Teacher Ratio
Cleveland City 125227	Cuyahoga	\$ 740	681	8	30	9	9	0	25
Columbus City 94566	Franklin	716	660	10	16	20	5	0	23
Cincinnati City 66722	Hamilton	676	636	7	11	14	1	1	26
Toledo City 55425	Lucas	680	634	6	6	13	7	7	24
Youngstown City 21089	Mahoning	804	769	7	12	15	0	0	21
Dayton City 44344	Montgomery	842	780	10	19	22	3	0	21
Canton City 17384	Stark	751	712	6	15	16	0	0	22
Akron City 47958	Summit	727	644	10	12	11	6	35	23

147. (i)

PLAINTIFF EXH. No. 110H

CINCINNATI PUBLIC SCHOOLS

GENERAL FUND PER PUPIL EXPENDITURES FOR INSTRUCTION
SELECTED DISTRICTS IN EIGHT METROPOLITAN COUNTIES IN OHIO, 1974-75

Source of Data: Ohio Department of Education

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION

LARGEST DISTRICT IN EACH COUNTY	County	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Teacher Aides	Other	Pupil Teacher Ratio
Cleveland City 125227	Cuyahoga	\$ 740	681	8	30	9	9	0	25
Columbus City 94566	Franklin	716	660	10	16	20	5	0	23
Cincinnati City 66722	Hamilton	676	636	7	11	14	1	1	26
Toledo City 55425	Lucas	680	634	6	6	13	7	7	24
Youngstown City 21089	Mahoning	804	769	7	12	15	0	0	21
Dayton City 44344	Montgomery	842	780	10	19	22	3	0	21
Canton City 17384	Stark	751	712	6	15	16	0	0	22
Akron City 47958	Summit	727	644	10	12	11	6	35	23

147. (i)

PLAINTIFF EXH. No. 110I

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION

HIGH EXPENDITURE DISTRICTS COUNTY	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Teacher Aides	Other	Pupil Teacher Ratio
Brentwood Local 146 Cuyahoga	1916	1708	2	122	12	19	0	7
Cuyahoga Heights 954	1449	1195	23	44	40	22	70	14
Beachwood City 1880	1335	1064	5	102	54	19	79	14
Shaker Heights City 6552	1198	1022	10	59	87	0	9	17
Ottawa Hills Local 948	1078	974	8	16	32	4	20	15
Lockland City 934	1077	996	12	29	21	0	0	17
Brooklyn City 2064	1067	967	8	42	38	0	0	16
Oakwood City 1867	1059	1003	10	9	31	0	0	18

147. (j)

215a

PLAINTIFFS' EXHIBIT No. 110J

GENERAL FUND PER PUPIL EXPENDITURE FOR INSTRUCTION

LOW EXPENDITURE DISTRICTS COUNTY	Total	Teacher Salary	Text Books	Library	Teacher Supplies	Teacher Aides	Other	Pupil Teacher Ratio
Lake Local 2773	\$ 504	471	6	3	5	3	5	24
Sandy Valley Local 1952	506	479	3	7	10	0	0	23
Minerva Local 2855	514	483	4	7	8	0	0	25
Western Reserve Local 1044	514	475	11	12	11	0	0	24
Springfield Local 1757	522	483	7	6	15	0	0	22
Springfield Local 3350	533	493	1	8	11	0	0	24
Northwest Local 2165	536	511	3	7	6	0	0	24
Plain Local 1170	537	496	7	14	6	0	0	24

216a

PLAINTIFFS' EXHIBIT No. 110K

PLAINTIFF EXH. No. 110K

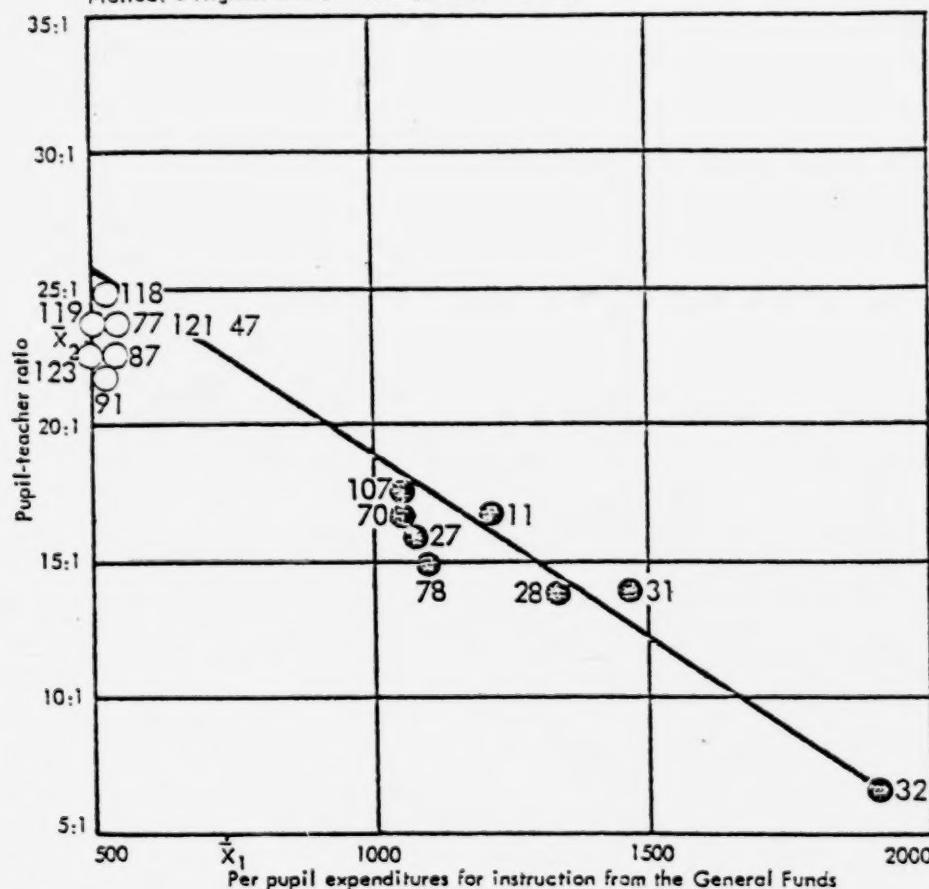
147. (k)

217a

PLAINTIFFS' EXHIBIT No. 112

Relationships⁺ between per pupil general fund expenditures for instruction and pupil-teacher ratio:school districts in 8 metropolitan Ohio counties, 1974-75

Plotted: 8 Highest and Lowest Expenditure Districts



③ High

107 Oakwood
27 Brooklyn
70 Lockland
78 Ottawa Hills
11 Shaker Heights
28 Beachwood
31 Cuyahoga Heights
32 Bratenahl

○ Low

119 Lake
123 Sandy Valley
118 Minerva
91 Western Reserve
87 Springfield (Mahoning)
77 Springfield (Lucas)
121 Northwest
47 Plain

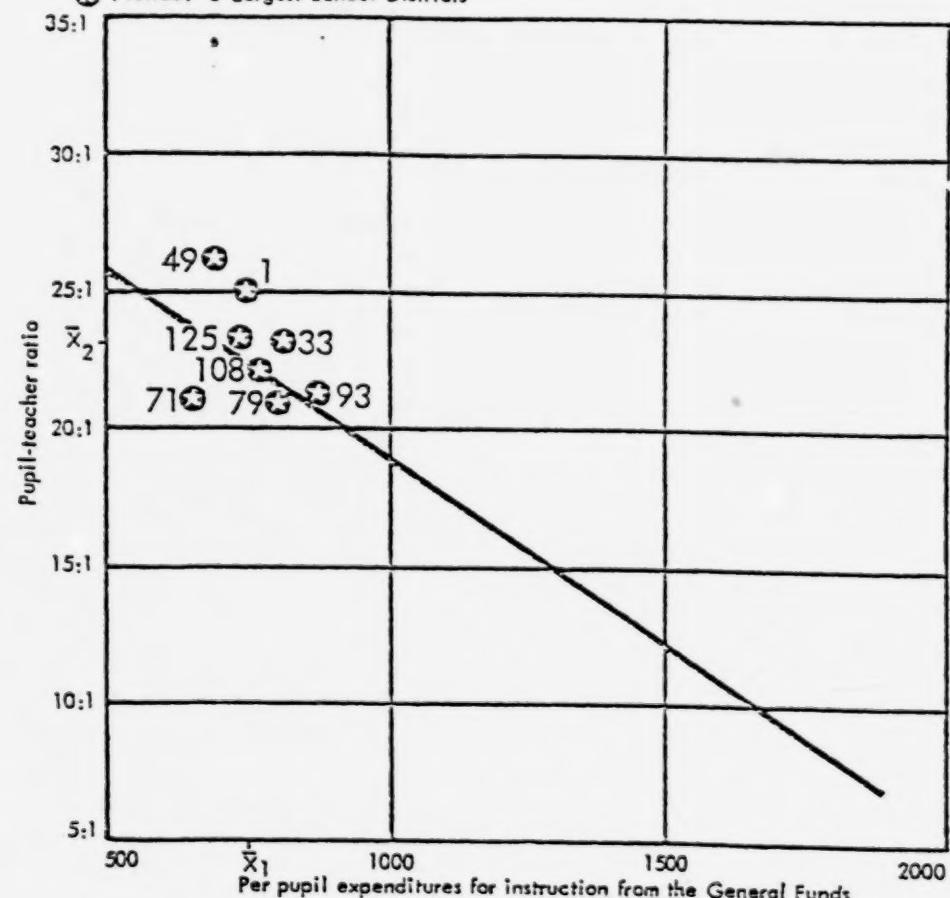
+Based on regression analysis

218a

PLAINTIFFS' EXHIBIT No. 113

Relationships⁺ between per pupil general fund expenditures for instruction and pupil-teacher ratio:school districts in 8 metropolitan Ohio counties, 1974-75

Plotted: 8 Largest School Districts



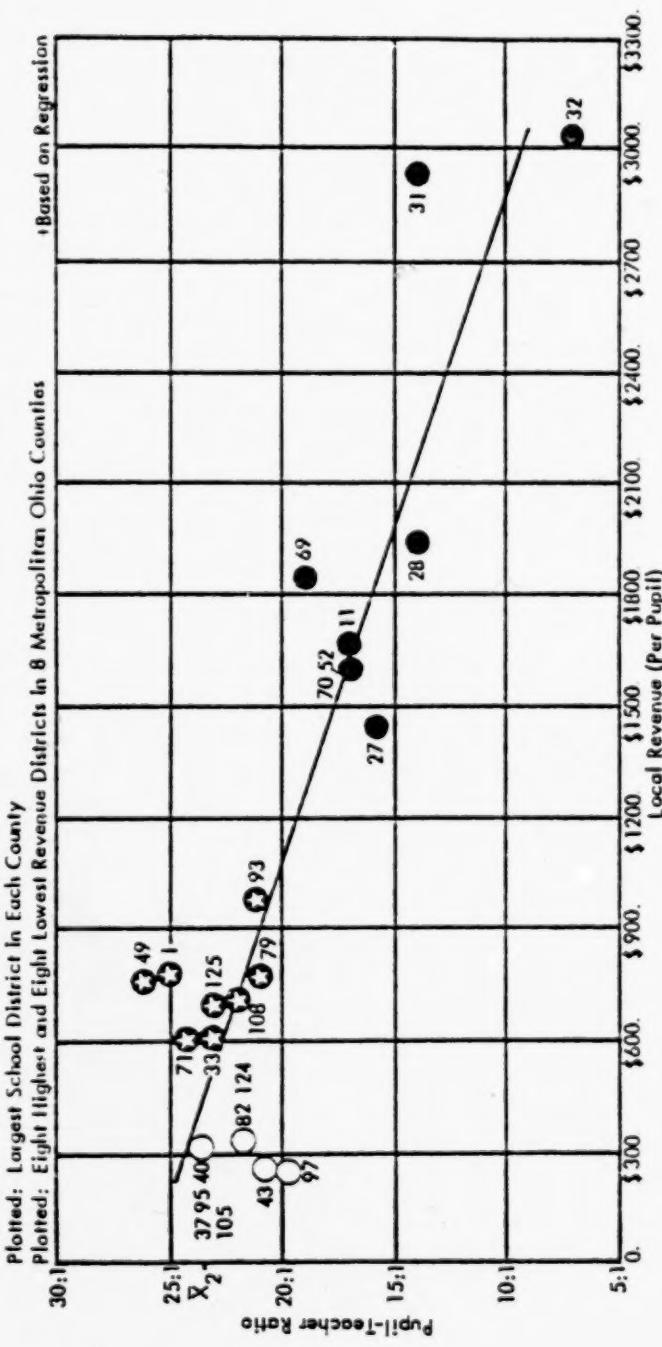
③

1 Cleveland
33 Columbus
49 Cincinnati
71 Toledo

79 Youngstown
93 Dayton
108 Canton
125 Akron

+Based on regression analysis

Relationship⁴ Between Local Revenue Per Pupil and Pupil-Teacher Ratio, Districts in 8 Metropolitan Ohio Counties



219a

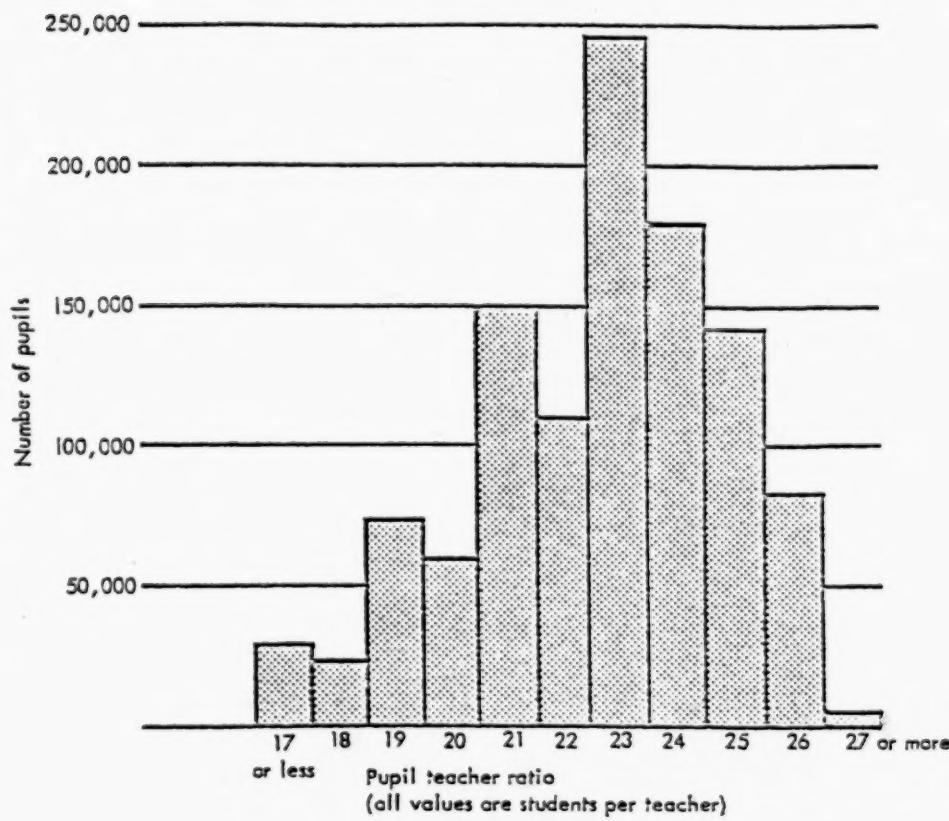
PLAINTIFFS' EXHIBIT No. 123

148. (c)

220a

PLAINTIFFS' EXHIBIT No. 111

Number of Pupils Per Pupil-Teacher Ratio in School Districts in 8 Metropolitan Counties in Ohio, 1974-75
(all values are pupils per teacher)



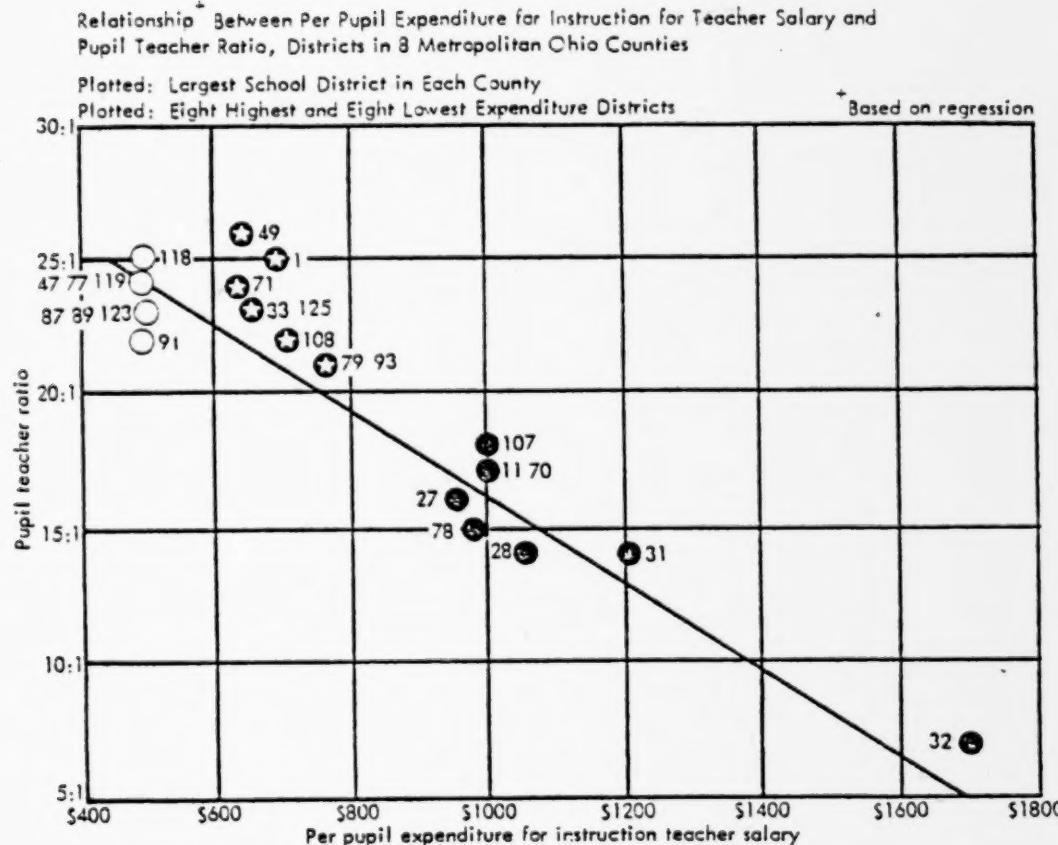
N.B. Source of Data - Ohio Department of Education

149. (a)

PLAINTIFF EXH. No. 111

221a

PLAINTIFFS' EXHIBIT No. 124

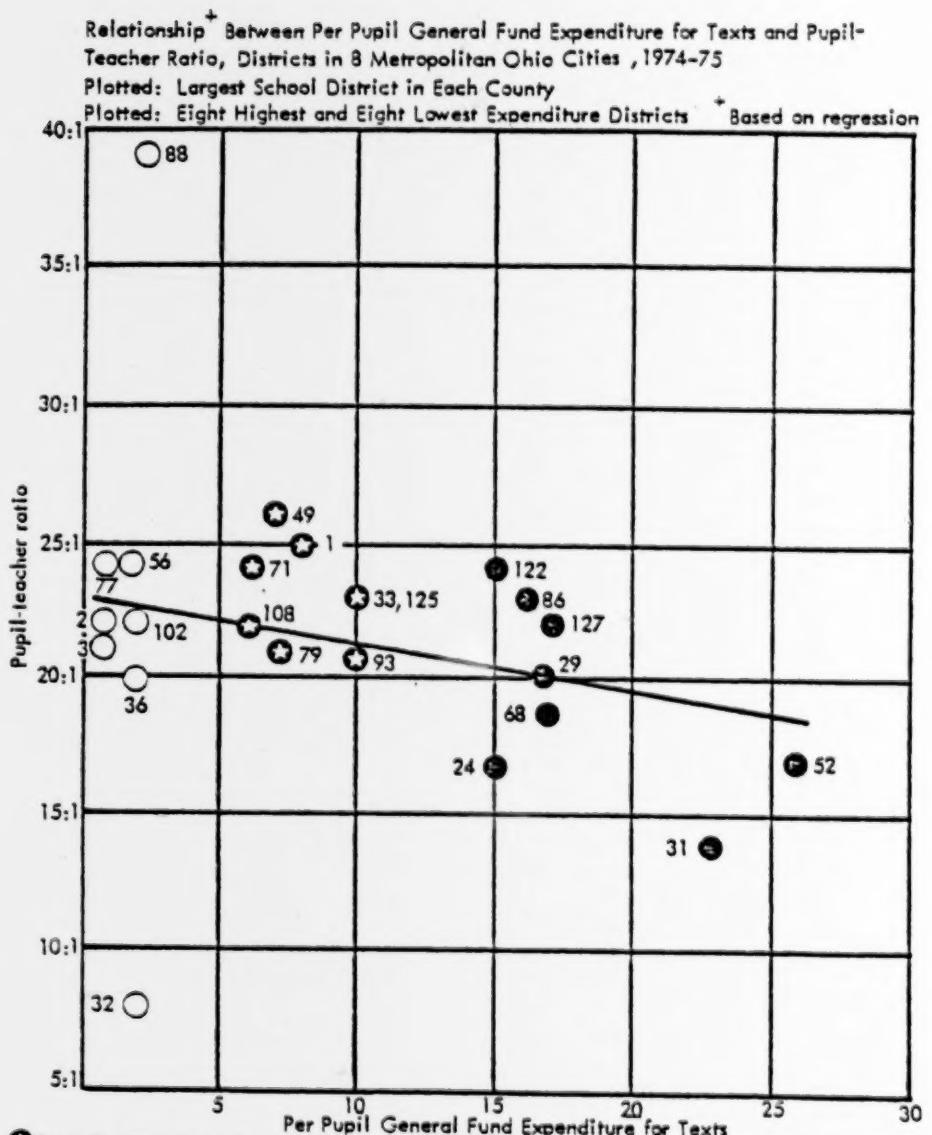


PLAINTIFF EXH. NO. /2

152. (a)

222a

PLAINTIFFS' EXHIBIT No. 125

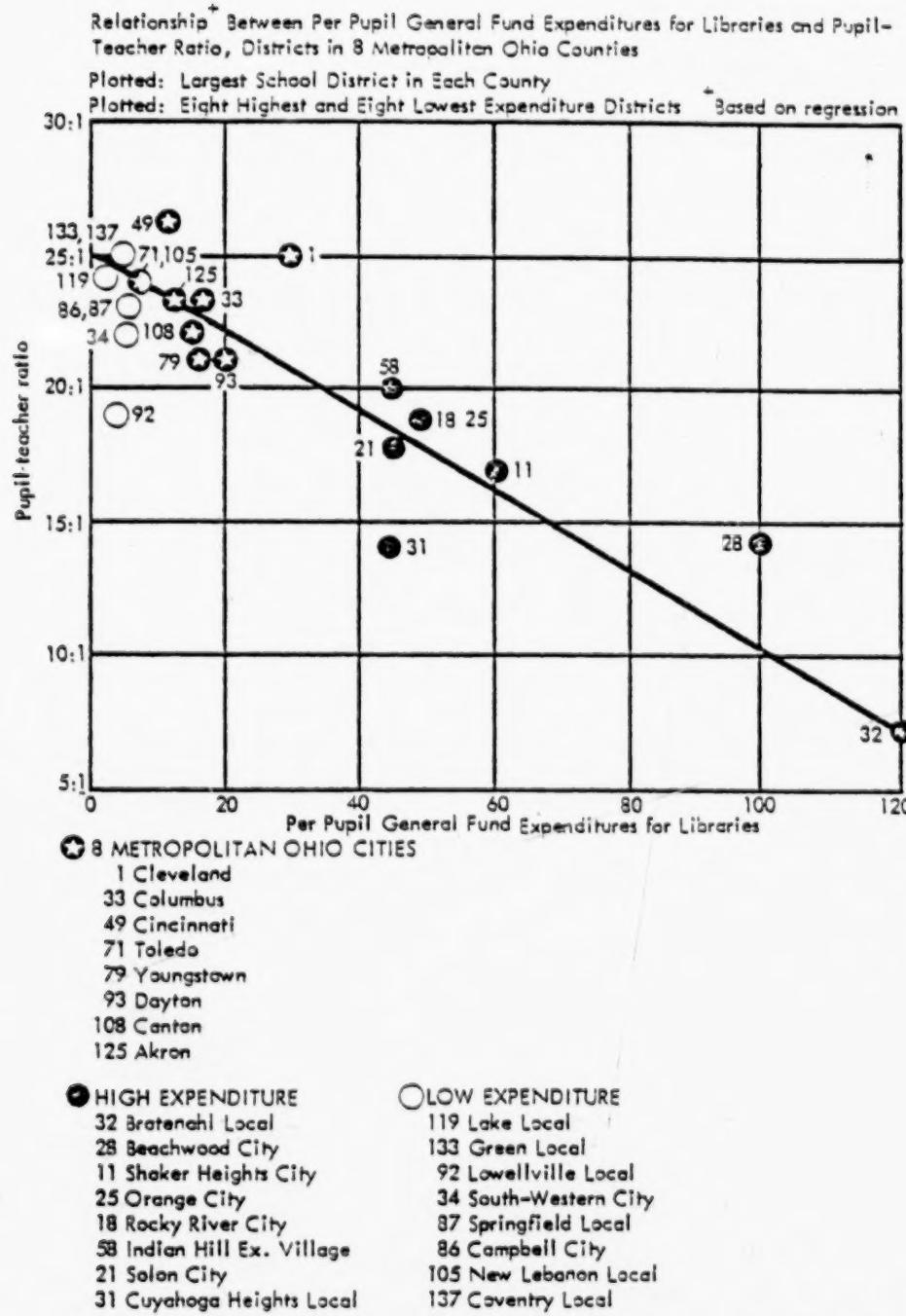


152. (b)

PLAINTIFF EXH. NO. /25

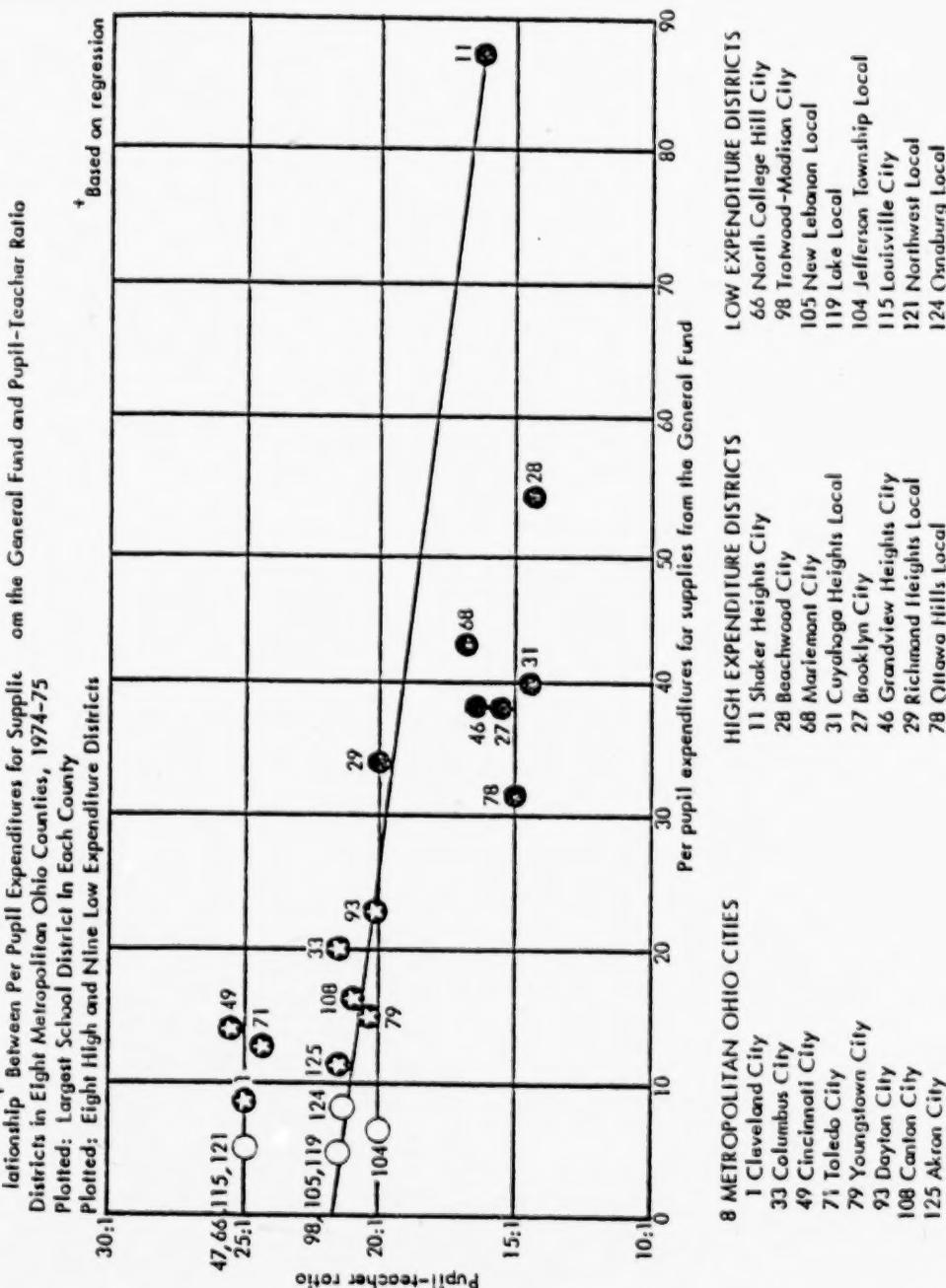
223a

PLAINTIFFS' EXHIBIT No. 126

PLAINTIFF EXH. No. 126
153. (a)

224a

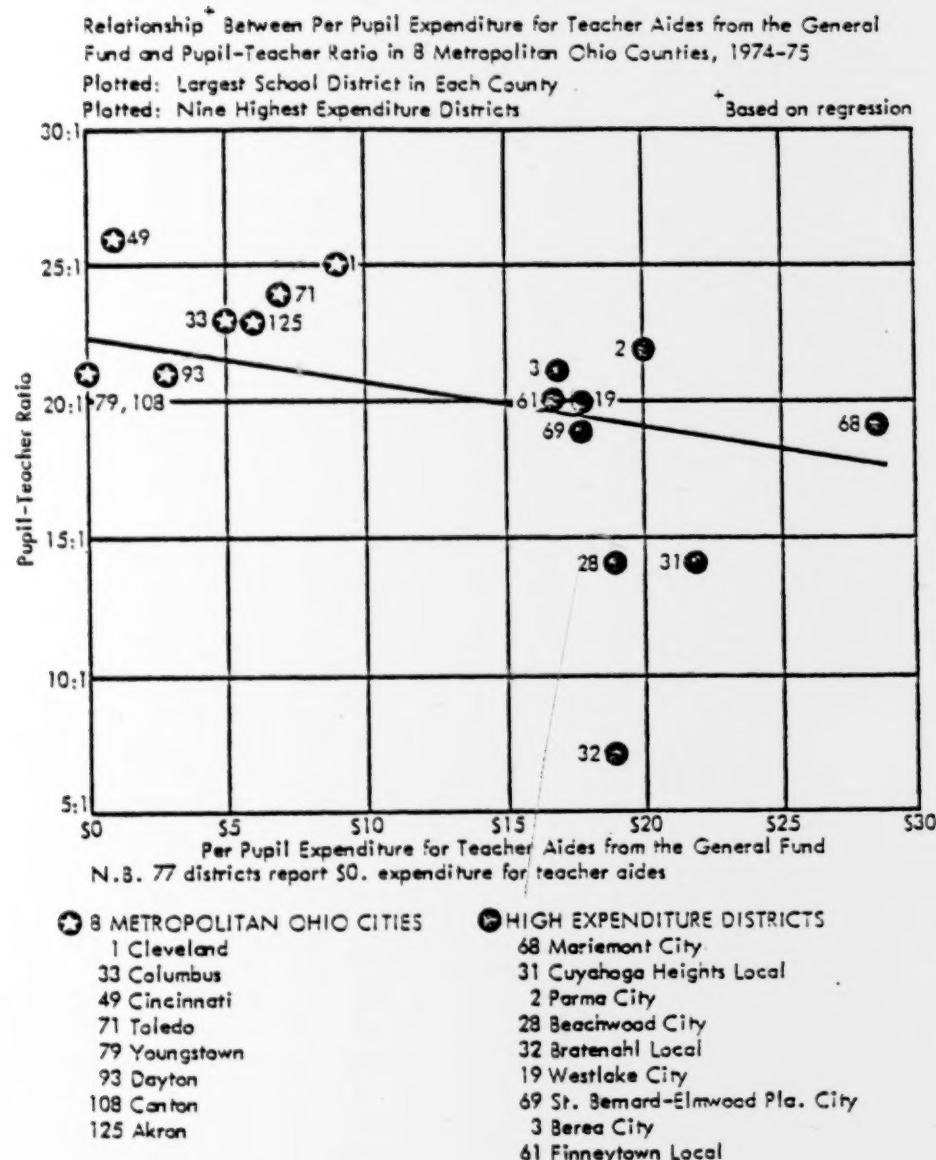
PLAINTIFFS' EXHIBIT No. 127



153. (b)

PLAINTIFF EXH. No. 127

PLAINTIFFS' EXHIBIT No. 128



(3) Vast Disparities Exist Among Ohio's School Districts In The Quantity and Quality Of Educational Services Provided

(3.1) The uncontested evidence shows that not only are there vast disparities in expenditures for instruction and instructional components among the school districts in Ohio, but the testimony demonstrates that these expenditure variations also produce very great disparities in the quantity and quality of the educational services which the districts provide to their students, and the Court so finds.

(3.2) Not only is this finding abundantly supported by the evidence which gave rise to the findings concerning conditions in the financially deprived districts, including the urban districts (Findings VII(E), (F) and (G)), and those far more favorable conditions in the well-financed suburban districts (Finding VII(H)), but it is also supported by the testimony of the school administrators and teachers who examined comparative conditions in deprived and well-financed districts in the same regions of the state.

(3.3) James D. Stock, Superintendent of the Lebanon School District in Warren County since December, 1976, and Assistant Superintendent of the Princeton City School District in Hamilton County prior to that time, testified about the following disparities in the educational conditions in those two districts:

(a) The average elementary class in the Princeton School District is 19.5 students and the average elementary class in the Lebanon School District is 28.5 students. (Tr. 3823).

(b) The Princeton district has approximately 8,600 full-time equivalent students and a central office staff of 60 persons. The Lebanon District has 3,500 full-time equivalent students and a central office staff of 11. Thus, the ratio of central office staff to students is 143 to 1 in Princeton and 318 to 1 in Lebanon. (Tr. 2823).

(c) The Princeton district has one art specialist, one music specialist and at least one physical education specialist in each elementary school. The Lebanon district has one art, one music, and one physical education specialist for three elementary schools. (Tr. 3824).

(d) The Princeton district has a certified media specialist and paid aides in each elementary school learning center. Each elementary school has a learning center which is well equipped with books, journals, learning kits and other educational materials. The Lebanon district has no certified librarians and very poorly equipped libraries. (Tr. 3824).

(e) The Princeton district has funds in the general fund for capital improvements in addition to a capital improvements levy. It is thus able to maintain the school buildings, purchase new equipment, and remodel its physical plant whenever necessary (Tr. 3826). The physical facilities are in excellent condition with new restrooms, brightly painted walls, and light, airy classrooms. (Tr. 3827). The Lebanon district has failed four bond issues in the last two years. (Tr. 3825). There are roofs which leak, old heating systems which require repair, drapes which need replacement, and blacktop which needs repair. The Lebanon district is unable to carry out even the most basic maintenance. (Tr. 3825).

(f) The curriculum offered by the Princeton district is very broad. It is able to meet the individual needs of the children and their broad range of achievement levels. The Lebanon district offers only a basic program for the college-bound students. (Tr. 3827-3829).

(g) The Princeton district has four certificated learning disability specialists and 22 tutors who provide individualized instruction every day to children with learning disabilities. It has a half-day resource center for children with learning disabilities and it has Title I reading programs in each school. (Tr. 3828). The Lebanon district has only a few learning disability teachers and two Title I reading teachers. (Tr. 3828).

(h) The Princeton district offers 88 extracurricular activities to its students including a broad range of athletic programs. The extracurricular opportunities available to the students in the Lebanon district are much more limited. The athletic staff has been recently reduced due to lack of money. (Tr. 3828-3829).

(i) The Princeton district has fourteen counselors for the students in grades seven through twelve. The Lebanon district has three counselors for 1200 high school students and one counselor for 800 middle school students. Lebanon does not meet the state standard for the minimum number of school counselors in the middle school. (Tr. 3824).

(j) The Princeton district conducts numerous in-service training programs for its teachers in a variety of areas. Teachers are encouraged to take professional leave. The Lebanon district provides only one guest lecture as its in-service training and has a more limited professional leave policy than Princeton. (Tr. 3830).

(k) The Princeton district is able to attract good teachers from the Lebanon district and from other districts because it has a desirable salary schedule and initiative pay. There are more teachers with masters' degrees in the Princeton school district than in the Lebanon school district. (Tr. 3831). The Lebanon school district is able to hire only inexperienced teachers. The salary schedule is lower than in Princeton and more teachers have second jobs to supplement their income than in Princeton. (Tr. 3831-3834).

(l) The Princeton district has a sufficient number of up-to-date textbooks. It periodically replaces them. The Lebanon district does not have a sufficient number of textbooks. It does not have enough biology texts, social studies texts, English texts or reading texts. The Lebanon district recently borrowed elementary reading textbooks from a local Catholic school because it did not have enough of them. (Tr. 3835).

(m) These disparities in the educational program are edu-

cationally significant to the students. The Princeton district is able to offer educational programs for a wide range of student ability in order to allow each child to develop his potential to the fullest. The Lebanon district is not able to offer adequate educational programs to all of its students. (Tr. 3837-3838).

(3.4) Vernon Alexander, a teacher at the Lyon Junior High School in the Cincinnati School District in Hamilton County, visited the Princeton Junior High School in the Princeton City School District in Hamilton County and testified that the following disparities in the educational conditions exist between those two junior high schools:

(a) The average class size in the Princeton Junior High School is 22 students. (Tr. 2504). The average class size in the Lyon Junior High School is 29 to 34 students. (Tr. 2475).

(b) The Princeton Junior High School building is very attractive. It is painted in soft pastel and bright colors. There is no vandalism. It is well-lighted. (Tr. 2504). The Lyon Junior High School's physical facilities are totally inadequate. There are broken windows, inadequate lighting, and evidence of vandalism. (Tr. 2498).

(c) There are no students in the halls or restrooms during classes at the Princeton Junior High School. (Tr. 2504). At the Lyons Junior High School, there are sometimes as many students in the hallways as in the classrooms during classes. (Tr. 2501).

(d) The Princeton Junior High School offers a summer school program for remedial instruction and for high interest learning. Two hundred and fifty students attended summer school in the summer of 1976. Lyons Junior High School offers no summer school program. (Tr. 2505).

(e) The Princeton Junior High School has two counselors for each grade; the Lyons Junior High School has two counselors for all of the grades. (Tr. 2506).

(f) The teachers at the Princeton Junior High School have one planning period per day individually and one planning period per day as a team. The teachers at Lyons have only one period at the end of the school day for planning and preparation and supervision of discipline problems. (Tr. 2506).

(g) The Princeton Junior High School has fourteen reading specialists as well as home tutors. Lyons has one reading specialist who also teaches part-time. (Tr. 2507).

(h) The Princeton Junior High School has two libraries, 13 to 14 private reading booths, a librarian, a full-time aide and closed circuit television. The Lyon School has a new resource center staffed with one librarian. (Tr. 2507).

(i) There is an adequate number of books, supplies, paper and educational materials at the Princeton Junior High School. There is a lack of such educational materials at Lyons. (Tr. 2508).

(j) The students in the Princeton Junior High School are actively engaged in the classrooms. There is a minimum of excessive noise. There is no loitering in the halls. The teachers are relaxed, and enthusiasm abounds. These conditions do not exist in the Lyons Junior High School. (Tr. 2508-2509).

(3.5) Phyllis Gaston, a teacher at the Sands Elementary School in the Cincinnati School District, visited three elementary schools in the Princeton School District — the Glendale Elementary School, the Sharonville School, and the Lincoln Heights School. She testified that the following disparities in the educational conditions exist between the Princeton schools she visited and the school where she teaches:

(a) The average class size in the three elementary schools in Princeton is 18. The teachers have aides. (Tr. 2546). Ms. Gaston has 28 children in her class at the Sands Elementary School. (Tr. 2552).

(b) The buildings in Princeton are clean and attractive. The halls are carpeted. The classrooms are well-lighted. (Tr. 2546). The Sands Elementary School is dirty. The classrooms are small. The wallpaper is coming off the walls. (Tr. 2536).

(c) The elementary schools in Princeton have an adequate number of educational supplies and materials. The schools have resource centers. There are many encyclopedias. (Tr. 2547, 2549). The Sands Elementary School does not have sufficient educational materials. Teachers spend their own money in order to obtain necessary supplies. (Tr. 2544).

(d) Music is offered in all of the primary grades in Princeton. Each school has a fulltime music teacher. The Sharonville Elementary School has a large music room with three pianos and many musical instruments. (Tr. 2547). The Sands Elementary Schools share a music teacher with another school. (Tr. 2540).

(e) The teachers in the Princeton elementary schools have time for planning each day. The teachers in the Sands Elementary School have no planning time during the school day. (Tr. 2548).

(3.6) Chester M. Kwiecien, assistant principal at the Beachwood High School in the Beachwood City School District in Cuyahoga County and a former teacher and administrator at the Patrick Henry Junior High School in the Cleveland City School District in Cuyahoga County, testified about the following disparities in the educational conditions between those two districts:

(a) The pupil-teacher ratio in Beachwood is 13 to 1 and the average class size is 18 to 20 students. There are only five students in the learning disability classes and, if necessary, only one student. The pupil-teacher ratio in Cleveland is 28.5 to 1 and the average class size is 30, with some classes as large as 40 students. (Tr. 3994-3995).

(b) The Beachwood district has three full time psycholo-

gists and eight or nine learning disability specialists. The Beachwood High School and Beachwood Middle School each have a resource unit which is staffed with learning disability specialists. A student can spend one period a day, two periods a day or the whole day in the resource center. (Tr. 3995-3996). The Cleveland district has limited psychological services, and thus it is extremely difficult for a student to obtain such help. Cleveland does not have resource centers and those children who require such special educational services usually drop out of school. (Tr. 3997).

(c) The physical facilities in Beachwood are modern, spacious and not overcrowded. The atmosphere is relaxed and conducive to learning. The Cleveland schools are overcrowded. (Tr. 3999).

(d) The availability of educational materials in Beachwood is unlimited. In addition, Beachwood has a duplicating facility. Teachers can thus create their own materials and duplicate them. Standard textbooks are available in Cleveland; however, other educational materials are very limited. It is difficult for teachers to prepare their own materials due to limited paper allocations in each school. (Tr. 4000-4001). Beachwood has extensive audio-visual equipment including photography and media production equipment. (Tr. 4002).

(e) The curriculum at the Beachwood Schools is extremely broad. The high school offers 190 separate courses to its student body of 740. A new course can be initiated at the Beachwood High School if there is enough student interest. The curriculum in the Cleveland Schools is limited and includes only the basic courses. (Tr. 4003-4004).

(f) The Beachwood District has a summer workshop program in which teachers develop new courses or modify existing courses. The summer workshops for curriculum development are much more limited in the Cleveland district and are usually funded with federal monies. (Tr. 4005). The teachers at Beachwood are able to attend out-of-state educational con-

ferences. It is extremely rare for a Cleveland teacher to attend an out-of-state educational conference. (Tr. 4007).

(g) The athletic facilities at Beachwood High School are extensive. The students have the benefit of excellent athletic equipment. The athletic facilities and equipment in the Cleveland schools are inadequate. (Tr. 4008).

(h) The Beachwood district offers extensive extracurricular activities to its students and has numerous faculty advisors for those activities. The extracurricular activities are limited in Cleveland as are the faculty advisors. (Tr. 4008-4009).

(i) The ratio of guidance counselors to students in the Beachwood schools is 300 to 1. That ratio in the Cleveland schools is 600 to 1 and in one school 800 to 1.

(j) The Beachwood City School district is able to meet the needs of each individual student. The Cleveland City School district is not able to meet those individual needs and thus many children are deprived of a quality education. (Tr. 4012-4013).

(3.7) Kimball Howes, Superintendent of the Plain Local School District in Franklin County and principal of Cuyahoga Heights School in the Cuyahoga Heights School District from 1971 through 1974, testified to the following disparities in the educational conditions between those two districts:

(a) The Cuyahoga Heights District is able to implement new programs and purchase necessary textbooks and library books. The less-affluent school districts, such as Plain Local, are often unable to initiate new programs or purchase necessary educational materials for ongoing programs. (Tr. 656).

(b) The majority of teachers in the Cuyahoga Heights School District have masters' degrees and many years of teaching experience with the district. Fewer than 20% of the Plain Local teachers have masters' degrees. (Tr. 657).

(c) The average class size in Cuyahoga Heights is 17 with

some classes as small as three. The average class size in the Plain Local schools is larger than 20. (Tr. 658).

(d) The curriculum in the Cuyahoga Heights School District is very broad. The curriculum is very limited at Plain Local. (Tr. 654).

(e) The Cuyahoga Heights School District is accredited by the North Central Association and the Plain Local School District is not. In order to be accredited, a school district must employ a specified number of teachers with specified qualifications, offer a specified number of hours of instruction in specified subjects, employ administrators with specified training and spend a specified amount of money on textbooks and libraries. (Tr. 659-660).

(3.8) Numerous other school superintendents³⁴ testified that there are vast disparities between the educational programs offered by their school districts and those offered by other school districts in the state. (Tr. 410-411, 493, 680, 709-710, 743, 774-775, 863-864, 893-900, 944, 1015, 1097-1098, 1134).

³⁴ The Superintendents of the following school districts: The Mt. Healthy City School District, The Wayne Local School District, The Benton-Carroll-Salem School District, The North Union Local School District, The Groveport Madison School District, The Big Walnut Local School District, The Jackson-Milton Local School District, The Union-Scioto Local School District, The Grand Valley Local School District, The Seneca East Local School District, The Bellaire City School District and the Federal Hocking Local School District.

(J) There Is A Relationship In General Between The Total Number Of Dollars Per Pupil Which A School District Has And The Quantity and Quality Of The Educational Services Which That District Provides To Its Students

(1) The plaintiffs demonstrated with financial data and the testimony of numerous superintendents, principals and teachers that there is a relationship between the total number of dollars per pupil which a school district has available and the quantity and quality of the educational services which that district is able to provide for its students. All of those districts which are able to offer only minimal educational programs simply lack the funds to purchase the educational components, such as a sufficient number of qualified teachers and supporting personnel and a sufficient quantity of educational resource materials, which are the prerequisites to delivering the educational services necessary in the provision of reasonably satisfactory educational opportunities. This is true for every one of the districts which the record shows is unable to deliver the level and quality of educational opportunity which its students reasonably require. (See Findings VII (E), (F) and (G)).

(2) The record is also replete with evidence that the school districts which are able to and do provide comprehensive educational opportunities of high quality are favored with many more dollars per pupil than are the districts whose curricula are narrow and austere. Those high quality school districts are not wasting their funds. (See Finding VII (H), (I).

(3) Thus it is clear from the objective and uncontested evidence that there is a direct relationship between the financial resources which school districts have and the educational resources which they are able to provide to their pupils or, stated another way, between educational dollars and educational inputs. The quality of a child's education is a function

of the financial resources which his school district has, and this Court so finds.

(4) This finding is amply supported not only by the objective evidence, but also by the opinions of numerous education experts who testified. Robert E. Lucas stated that there is absolutely a relationship between the number of dollars per pupil that a school district has to spend and the quality of the educational program in that district. (Tr. 1159). Former State Superintendent of Public Instruction Martin Essex conceded that a district that spends \$1100 per pupil is, more likely than not, delivering a higher quality of education than is a district that spends \$700 per pupil.

(5) Superintendent Williams of Madison Local School District testified to the same opinion in these terms:

I think there's definitely a correlation between the amount spent and the instruction delivered. That it involves such things as employing teachers with more experience and training, having more educational materials, supplies, equipment available for instruction. (Tr. 744).

(6) Superintendent Ellis of the Columbus district testified:

There is a strong relationship between the dollars spent and the quality of education received. The fact that you spend a large sum of money does not guarantee a good education, but the fact that you spend a small amount of money virtually guarantees that you will have a poor level of education. (Tr. 1388).

(7) Superintendent Briggs of the Cleveland district stated:

My opinion is that the more money you have available for education, for purchasing of educational services, the greater is your ability to purchase, and also generally, like 99% of the time, is greater ability to actually establish better educational programs. (Tr. 1469).

(8) G. Alan Hickrod, Professor of Educational Administration at Illinois State University and Director of the Center

for the Study of Educational Finance, also expressed the opinion that there is a relationship between a school district's expenditure level and the level of services offered to its students. A district which has \$1800 to \$2000 per pupil is able to provide tutorial services, special reading instruction, smaller classes, etc. and thus is able to deliver a more meaningful educational opportunity to its students than is a district that has \$900 per pupil. (Tr. 7460).

(9) Harold Howe II, Vice President of the Ford Foundation and former United States Commissioner of Education, expressed the opinion that while small differences in expenditures do not make a great deal of difference educationally, differences in the range of \$1,600 per pupil as compared to \$800 per pupil do make a difference educationally. The district with \$1600 will offer an education which serves the needs of all the students, including those with special needs, thus enabling them to lead more constructive lives. (Tr. 4454). Mr. Howe stated that the entire assumption underlying the Title I federal program, which concentrates large amounts of money on disadvantaged children, is that a reasonable difference in expenditures makes a difference in education. Mr. Howe's observation about the Title I program is likewise applicable to the categorical grant program in Ohio which is also designed to concentrate large amounts of money on children with special needs.

(10) Dr. Walter Hack, Professor of Educational Finance at Ohio State University, also testified that there is a relationship between expenditures and the nature and quality of education. In Dr. Hack's opinion there is a significant difference between the quality of the educational programs in one district which has the resources to have a pupil-teacher ratio of 17 to 1 and in another district which cannot afford to have a ratio lower than 24 to 1. (Tr. 4513). Other witnesses who supported the foregoing opinions are Roe L. Johns, Professor Emeritus at the University of Florida and President of the Educational Finance Management Institute. (Tr. 4259), Superintendent Holloway of the Beachwood district (Tr. 3737), and Superintendent

Stock of the Lebanon district. Dr. Stock stated that schools without sufficient money must spend all of their money on very basic cognitive programs while schools which have additional dollars can broaden their programs into areas of affective education. (Tr. 3838).

(11) It is significant that every educator who testified in this case and who was interrogated on this subject stated that the level and quality of a district's educational program bear a direct relationship to its financial resources. Indeed, State Assistant Superintendent of Public Instruction, G. Robert Bowers, conceded that this is true. (Tr. 6620-21). And William A. Harrison, Staff Director for the Education Review Committee for the General Assembly, admitted that he believed that the General Assembly holds the opinion that there is a relationship between the number of dollars available for the public schools and the quality of education available in the schools. (Tr. 4918).

(K) There Is A Relationship In General Between The Delivery of Educational Services To Children And The Educational Achievement of Children

(1) The plaintiffs also proved with considerable objective evidence and opinion testimony that there is a direct relationship between the delivery of educational services to children and the educational achievement of those children — that is, that school children may reasonably expect to derive direct measurable benefits from the educational opportunities which are provided to them. The significance of that proposition is that there is a demonstrable relationship between the number of dollars per pupil which a school district has and its capacity to benefit children directly and immediately. Thus, the disparities which exist among school districts in financial capacity, *i.e.* in dollars per pupil, represent real and immediate differences in potential educational achievement of the school children in Ohio, and this Court so finds.

This finding is critical. It is the underpinning for the further finding that, because the system is one in which vast differentials in resources exist among the school districts, the present system for financing public elementary and secondary education in Ohio deprives the school children in Ohio of an essentially equal opportunity to achieve and advance educationally and to equip themselves for their future lives.

(2) Many expert witnesses supported their opinions that there is a relationship between educational services and student achievement with empirical evidence. Robert E. Lucas, President of Wilmington College, stated that the educational opportunities provided to children are vital to the achievement of those children. (Tr. 1218). Dr. Lucas can determine the quality of a student's elementary and secondary education based upon that student's college performance. The students from inner city and rural school districts which have inadequate facilities and staffing often exhibit in college noticeable educational deficiencies which generally cannot be made up. (Tr. 1224-1226). Dr. Lucas was the Superintendent of the Princeton City School District for twenty years prior to assuming the position of president of Wilmington College in 1975. While he was Superintendent, the Princeton School District merged with the Lincoln Heights School District. Prior to the merger, the Stanford Achievement Test scores of the Princeton students averaged six to seven months above the national norm. However, after the merger the average test scores dropped below the national norm due to the influx of the students from Lincoln Heights, many of whom were deficient in basic skills such as language and mathematics. (Tr. 1218-1220). The Princeton School District expended substantial funds to improve the quality of the Lincoln Heights educational program by reducing class size, hiring special teachers, developing learning centers, redecorating buildings, and providing in-service training for all of the teachers. The result of this massive improvement in the quality of the educational program offered to Lincoln Heights students was that, within five years, the average scores

for the entire district on the Stanford Achievement Tests were above the average Princeton scores before the merger. And the achievement level for the students in the Lincoln Heights as well as the Princeton area continues to be high. (Tr. 1220-1222).

(3) John Grate, Coordinator of Planning and Development for the Cincinnati School District also testified that there is a direct relationship between the nature of the educational services offered to children and the achievement of those children. He based his opinion upon his experience in general and upon the positive results of the use of the Cincinnati Instructional Management System. The Cincinnati Instructional Management System (CIMS) is an individualized, self-paced reading and mathematics program for grades 1 through 8. CIMS was originally an experimental program in Cincinnati and is presently in effect in 40 schools in Cincinnati and in schools in several other districts in Ohio. The children are tested on identifiable basic skills approximately once a month. The tests are then sent to the Educational Testing Center where a computer records the information and produces reports for the child, teacher and parent. (Tr. 2910-2913).

The results of this program are that the children achieve more substantial gains in the standardized achievement tests than children not involved in the program. The Cincinnati School District conducted an experiment in the 1975-76 school year to test the effect of the program on the children. The results of that experiment were that the CIMS group in the inner city schools gained a year and two months in achievement while the control group gained only 9 months; the CIMS group in the outer city schools gained two years and one month and the control group one year and one month. Mr. Grate concluded that the differences in progress could be explained only by the use of the Instructional Management System.

(4) Jack P. Taylor, Superintendent of Shaker Heights School District, also agreed that there is a relationship between the educational program provided the children in a school district and the level of achievement of those children. As an example of this relationship, Mr. Taylor discussed a curriculum project which he conducted while he was Superintendent of Schools in Xenia, Ohio. In that school system, there was one elementary school, located in a low socio-economic community, which produced standardized test scores which were lower than the scores in the rest of the system. The school district assigned its best teachers to that school as well as persons qualified to administer the tests. The result was an average 30 point increase in the test scores. (Tr. 2868-2869).

(5) A witness for the defendants, Ambrose E. Brazelton, Chief of the Urban Program Section for the Office of Urban Education for the Ohio Department of Education, agreed that there is a direct relationship between the provision of educational services to children and the achievement of those children. He specifically stated that the utilization of Disadvantaged Pupil Program Funds (DPPF) for disadvantaged children has had a very positive educational effect upon these children.

(6) James Jacobs, Superintendent of the Cincinnati Schools, also expressed the opinion that there is a relationship between the quality of an educational program and the achievement of the students. As an example, Mr. Jacobs cited a program entitled Project Success. Project Success was a pilot experiment conducted in 1973 to determine if a reduction in class size would improve the achievement of students. Enriched in-service training programs were also provided to enable the teachers to individualize instruction. The results of the project were that the children in the program improved their basic skills; however, due to a lack of funds, Project Success was not continued. (Tr. 1584-1587).

(7) Dr. Jacobs also stated that, as a result of the Title I

compensatory education programs funded by the federal government, the achievement of educationally deprived students enrolled in those programs in Cincinnati has greatly increased. The normal educational growth for Title I eligible students is five to eight months per ten month school year; however the children enrolled in Title I programs have increased their educational achievement to ten months per ten month school year. (Tr. 1588-89).

(8) As another example of this relationship, Dr. Jacobs discussed a federally funded pre-school program. In this program educationally deprived children attend a full-day pre-kindergarten or kindergarten. After participation in this program, the children involved scored in the 60th percentile on nationally standardized tests compared to the 30th percentile score of the children who did not attend this full-day kindergarten. The school system conducted longitudinal studies of the children in the program and determined that the gains they made diminished in the later grades unless these children were provided with continuing enrichment programs. However, the Cincinnati school system does not have the funds to continue the program in the grades beyond those funded by federal funds.

(9) Dr. Jacobs also cited a remedial reading program for junior high school children entitled "Reading in the Content Areas" as an example of the relationship between educational programs and achievement. In this program, every teacher teaches reading in addition to a specific subject. Dr. Jacobs stated that in spite of the increase in student achievement resulting from this program, it is operating in only three junior high schools because it is very costly. (Tr. 1595-1598). Dr. Jacobs further stated that the Cincinnati School District, due to lack of funds, is unable to implement many educational programs which are known to be effective in improving student performance. (Tr. 1604-1605).

(10) John Ellis, Superintendent of Schools in Columbus,

Ohio, also agreed that the provision of specialized educational services directed at students' special needs produces measurable results in student achievement. (Tr. 1389).

(11) Paul W. Briggs, Superintendent of Schools in Cleveland, testified that there is definitely a relationship between the delivery of educational services to children and the achievement of those children. (Tr. 1481). Specifically, Dr. Briggs stated that the funds spent on vocational educational and other special needs in the Cleveland District produce measurable results in pupil achievement. One such measurable result is an increase in the number of students attending college. In 1967, 7.2% of the Cleveland High School graduates attended college; by 1977, the percentage increased to 52. Another measurable result is an increase in reading and mathematic test scores as a result of concentrated remedial programs. (Tr. 1478-1480). Dr. Briggs stated that by providing special educational programs for inner-city students, the students become educationally "upwardly mobile"; however, these programs are limited, due to inadequate funding. (Tr. 1483-1485).

(12) G. Alan Hickrod, Professor of Educational Administration at Illinois State University and Director of the Center for the Study of Educational Finance, also testified that there is a relationship between the delivery of educational services and the educational response of the children to those services as measured by a variety of indicators of student achievement. (Tr. 7459).

(13) Charles Neff, reading specialist employed by the Indian Hill Exempted Village District and a co-author with his wife, Nancy, of a book entitled *Aids To Curriculum Planning, English Language Arts K through 12*, testified that the provision of intensified reading instruction has a positive impact upon student's achievement as well as self-esteem. Mr. Neff stated:

From norm reference tests that we have given our children, we find that kids within the reading program, their

scores do go up, but I think it's more than scores. The students that we have worked with have stayed in school, they have finished high school. So that because we intervene, because we give them some tricks and some opportunities to be able to stay within the content areas and be competitive with some very bright students, they're able to come out after four years of high school feeling successful about themselves, and because they could read, they did read, they were encouraged to read, they made themselves better. (Tr. 2771).

(L) The Present System For Financing Public Elementary And Secondary Education In Ohio Denies Essential Equality Of Educational Opportunity To The School Children Of Ohio. Moreover, The System Delivers Substandard Educational Services To The Overwhelming Majority Of Ohio's School Children

(1) Inasmuch as the present school financing system in one in which huge disparities in total state plus local support exist among the districts (Finding VII (I)(1)), in which vast disparities in expenditures for instruction exist among the districts (Findings VII(I)(2)), and in which substantial disparities in the quantity and quality of educational services exist among the districts (Finding VII(I)(3)), and inasmuch as there is a relationship in general between the total number of dollars per pupil which a school district has and the quantity and quality of the educational services which that district provides to its students (Finding VII(J)), and inasmuch as there is also a relationship in general between the delivery of educational services to children and the educational achievement of children (Finding VII(K)), the Court therefore finds and concludes that the present system for financing public elementary and secondary education in Ohio denies essential equality of educational opportunity to the school children of Ohio.

(2) The Court reiterates and includes herein its finding that the overwhelming majority of school children in Ohio are receiving substandard and inadequate educational services. (See Finding VII(1)(1.5)).

(M) The System Does Not Provide Sufficient Funds To Most Of The Districts. Nor Does It Enable The Districts To Determine Their Future Resources Definitely Enough To Permit Them To Plan Their Curricula And Staffing

(1) The Court finds from the evidence that not only does the present system fail to deliver a sufficient amount of money to the school districts to enable them to offer more than sub-standard services to the students, the financing system also operates in such a manner as to prevent the school districts from planning their curricula and staffing satisfactorily in advance of the school year. This detracts from the efficiency of the system.

(2) Carl H. Heimerdinger, Clerk-Treasurer of the Cincinnati Board of Education, testified that this circumstance results largely from the fact that, by law, the school district's fiscal year, which ends December 31, is different from its operational year. A fiscal year ending June 30, rather than December 31, would be consistent with both the state fiscal year and the school year and would improve school district planning. (Tr. 1797-8).

(2.1) One of the problems with having a fiscal year which is different from the school year is that districts must contract with teachers for a school year not later than April 30 of the previous school year. At that time the districts have no knowledge of what the income and resources of the district will be during the first six months of the ensuing calendar year, which is the major portion of the contractual year. (Tr. 1798).

(3) Numerous superintendents testified that in December of 1976 they were unable to predict how much money their

districts would receive from the state in 1977. Nor did they know with any degree of certainty what the prior year's property tax receipts were going to be. (Tr. 420, 448, 495, 599-600, 688, 700, 726, 822, 829, 917, 1010-11). Superintendent Jacobs stated that in December of 1976 he did not have a final account of 1976 expenditures, and thus did not know the balance which the district would carry over into 1977. (Tr. 1625-6).

(4) Cincinnati Board member John S. Rue stated that as late as November 15, 1976 the district was told that it could expect to receive \$12,000,000 from the personal property tax. Then on December 1 it was advised that the figure would be close to \$15,000,000. The receipts turned out to be just under \$14,000,000. As Mr. Rue said, the only course the Board could follow was to protect itself from overspending and carry a surplus into the next year. (Tr. 1880-81). He stated that the district had not made any firm plans for the 1977 expenditures because the district is forced to operate with revenue estimates that are only "pretty close". "You don't find out how much money you are going to have to work with until its too late to do any satisfactory planning." (Tr. 1882). Cincinnati Board of Education President Henry Kasson said that "we never seem to know or have the ability from day to day to project what our revenues were going to be. If we projected short, we wound up with money at the end of the year which could have more appropriately been applied to program considerations." (Tr. 1933-4).

(5) Superintendent Ellis of the Columbus district stated that the district's projections for 1977 assume "that there will be additional funds from the state which are not presently in the state financing program, and that the district will be able to persuade the voters to pass an additional tax." (Tr. 1400).

(6) The Court thus finds from the evidence that the financial uncertainties which school districts face under the present system represent a major and unnecessary failure of Ohio's school finance system.

VIII. REASONS WHY CONDITIONS OF EDUCATIONAL DEPRIVATION AND INEQUALITY OF EDUCATIONAL OPPORTUNITY EXIST UNDER THE PRESENT SYSTEM

VIII-I. Deficiencies And Inequities In The System In General

(A) The Success Of The System Depends Upon The Success Of School Tax Levies And School Bond Issues (Local Tax Effort) And The Local Tax Effort Component Of The System Has Collapsed Of Its Own Weight

(1) The entire system for financing public elementary and secondary education in Ohio is one in which the state purports merely to supplement with direct payments the funds which the school districts generate by the means of taxes levied upon real property and personal property used in business. The system of local taxation is not peculiar to school districts. It is utilized by other agencies of local government as well.

(2) As noted in Finding VI (C)(3), 62% of all of the funds in the entire system are funds derived from the property taxes levied by school districts. Because the General Assembly has enacted such a system and because school districts do not have the capacity to secure voter approval for school tax levies and school bond issues, the system does not generate for most of Ohio's school districts, enough money, even including subsidies received from the state, to enable the districts to finance their schools at a reasonably satisfactory level.

(3) The evidence that the local property tax component of the system has utterly failed is overwhelming. Superintendent after superintendent of school districts which have been driven to closing or to the brink of closing schools for lack of funds testified to histories of consistent failures of school tax levies and school bond issues.

(3.1) Since November of 1974, the Mt. Healthy district in Hamilton County has had six consecutive operating levies defeated. (Tr. 404). The Toledo district has had its last five consecutive levies defeated.³⁵ (Tr. 7400, Plaintiffs' Exh. 300). The Cincinnati district has had six consecutive levies defeated.³⁶ (Tr. 1709, 7379). The Benton-Carroll-Salem district lost its last two levies, including one which was defeated during the time the schools were closed for lack of funds. (Tr. 671). The Madison Local district in Franklin County had four levies fail in a 13-month period, one of which failed during a time when the schools were closed for lack of funds. (Tr. 724-5). The two most recent levies proposed by the Big Walnut district failed. (Tr. 768). The Jackson-Milton district has experienced six consecutive levy failures in the last 2½ years. (Tr. 829, 833-5). The Union Scioto district had four straight levies fail before it finally passed a levy in November of 1976. (Tr. 877, 879). Grand Valley district has had two levy failures in the last year. (Tr. 936-7). Senaca East has experienced five consecutive levy defeats. (Tr. 1002-3). Bucyrus City has had four consecutive levy failures since 1974. (Tr. 1064). Bellaire City lost five consecutive levies before it passed a levy in 1976. (Tr. 1087-8). The Federal Hocking District had eight levies defeated since 1967 until it finally passed one in November of 1976. (Tr. 1113-1114). The Lebanon district has had four bond issues fail in the last two years. (Tr. 3825).

(3.2) The plaintiffs' exhibits show the pattern of the failure of school tax levies and bond issues in Ohio during the period of 1971-1975, inclusive. According to plaintiffs' Exhibit 161, during that period only 129 of 475 proposed school bond issues (27.2%) passed, and only 365 of 978 (37.3%) proposed school tax levies (new issues) passed.

³⁵ The Court judicially notices the passage of a levy submitted by that district on November 8, 1977 during the time that the schools were closed for lack of funds.

³⁶ The Court judicially notices the defeat of an emergency levy submitted by that district on November 8, 1977.

(3.3) Plaintiffs' Exhibit 162 shows the pattern of consistent success that only five districts experienced and the pattern of consistent failure that 48 districts experienced between 1971 and 1975. In the entire state, only five districts passed three or more levies with no failures, while 48 districts failed three or more levies with no success. Some of the districts had as many as five or six consecutive failures.

(3.4) Defendants' Exhibit VI-F-7 shows that in 1976 and 1977 new school levies have fared slightly better than they did in 1974 and 1975, with 44.8% passing in 1976 and 54% passing in 1977. William A. Harrison, Staff Director for the Education Review Committee, testified that the failure rate for new tax levies remained approximately the same during the first year of operation of the present system as it was during the last four years of the prior system. He stated that obviously neither the new formula nor any other factor has caused any marked change in the passage of school tax levies. (Tr. 4911-13).

(4) The record is replete with expert opinion concerning the futility of continuing to rely upon the property tax, or upon any revenue source which depends upon voter approval, for financing public education. University of Cincinnati Professor Norman Thomas, a political scientist and specialist in the politics of education (Tr. 3591), expressed the best considered opinion on this subject of the many experts who addressed themselves to it. Dr. Thomas, who is familiar with the voting records of the residents of Ohio school districts during the years 1971-75 and is also familiar with the relationship between the success and failure of local tax effort and the support level of the school districts in Ohio (Tr. 3628), expressed the opinion that the present system for financing public education is failing. (Tr. 3629). Dr. Thomas stated:

I base that opinion on the fact that the school districts which have generally succeeded in passing tax levies in the last several years have been school districts that enjoy

an advantage in terms of property or income wealth as opposed to school districts where these levies have rather consistently tended to fail. In other words, the school districts which have the greatest needs for additional resources through approval of voter referendum to vote additional millage are the precise school districts which have had the least success in passing those millages.

(Tr. 3629-30).

When asked for his opinion, if any, as to why the failure ratio for school tax levies and school bond issues has been so consistently high in a majority of Ohio's school districts, Dr. Thomas stated:

I believe, and this is based on general studies of referendum behavior conducted over a substantially long period of time by political scientists, that the high incidence of negative voting in referendum elections, specifically such as school district bond issues and millage impositions, occurs because, among other things, it is one of the few points in the American political process today where the average voter is afforded an opportunity to actively register his or her opposition or disapproval of expanded governmental spending in a general sense.

What this means is that educational support is the one point, running all the way from City Hall to the Congress of the United States, where John Q. Citizen has the chance to say formally and effectively and officially by his own vote, No, no more spending, no more taxes, government is doing too much.

Now, there are other negatives and alienation factors that also come into play in referendum voting, where a wide range of citizen resentments about the whole host of problems concerning policy questions that confront society are also reflected. It's an unfortunate situation because what it means is that the school children of this state and other states that rely on referendum voting for tax or bond issues, are put into the position of having to

bear the brunt of a substantial degree of citizen opposition to what government is doing on a whole range of totally unrelated funds and areas of activity.

(Tr. 3630-31).

Dr. Thomas also expressed the opinion that the defeat of school tax levies affects school children adversely:

I believe when a tax levy or a bond issue fails in a school district, it instills or creates in the children of the school district a very strong sense of rejection. A feeling that their parents and their neighbors have said no to an adequate level of support for the schools in their school system.

(Tr. 3633).

He further stated:

... the process which permits those parents and neighbors to close their schools or to force the curtailment of a variety of aspects of the school program, to me is bound to have a terribly debilitating impact on those young people, both with respect to their own feeling of self-worth and secondly with respect to the kinds of supportive attitudes and loyalties toward the political process, and the participation in it, that are one of the main purposes for having a system of public education.

(Tr. 3634).

(5) Many other reasons why the financing of education through property taxation has failed were expressed by numerous witnesses. One reason that some school tax levies fail in certain districts is that the residents of these districts bear very heavy tax burdens to support high costs of local government and they cannot afford to increase their tax burdens for education.³⁷ This disproportionate non-school governmental cost is referred to as "municipal overburden."

³⁷ David K. Wiles, Professor of Education Administration at Miami University in Oxford, Ohio and Robert H. Wessel, Professor of Economy and Administration at the University of Cincinnati in Cincinnati, Ohio.

(5.1) The Cincinnati district has greater municipal overburden than does any school district in the state. As Plaintiffs' Exhibit 164 shows, Cincinnati's non-school tax burden, in 1974, was 69.19% of its total tax burden. By comparison, the non-school tax burdens of the Mariemont, Oak Hills, Wyoming, Indian Hill, Madeira and Finneytown districts ranged from 31.6% to 41.48% of total taxes. Cincinnati's median family income was \$9232. The median family incomes of those same six Hamilton County suburban districts ranged from \$12,077 to \$18,432. Thus, the taxpayers in the Cincinnati district are bearing a substantially larger non-school tax burden with substantially less personal income than are their counterparts in the surrounding suburbs. This undoubtedly helps to account for the fact that the Cincinnati district's school operating millage rate in 1974 was 25.94 as compared to the school operating millage rates in those six suburban districts ranging from 33.13 to 40.92.

(5.2) Thus, one of the predominant reasons that the Cincinnati district's voters and those of many other districts do not pass school tax levies and bond issues is that they cannot afford to pay the increased taxes those levies and bond issues would impose upon them. As Cincinnati Board of Education member John S. Rue stated, "The Cincinnati taxpayer is carrying more of a load with less resources than anybody else in this county." (Tr. 1898).

(6) The defendants have asserted that one of the reasons that school district do not pass more tax levies is that they do not try hard enough to pass them. While that assertion is not relevant to the issues in this case, the evidence shows that it is also not true. The plaintiffs presented evidence of the massive efforts which school districts have made to pass tax levies, to no avail. Superintendent Ellis described the door-to-door levy campaign that the Columbus district waged unsuccessfully in November, 1976, as "the most vigorous, extensive campaign that the City of Columbus has ever seen." (Tr. 1374-5). Superintendent Dick testified to the extensive effort which the

Toledo district made to pass an emergency levy in June of 1977. That levy had the all-out support of the media and had no organized opposition, but it received only 39% of the vote. (Tr. 7400-7404). Thomas Humes, campaign coordinator for the Committee to Keep Our Schools from Closing, described the complete and well-financed campaign which was waged to pass a levy in the Cincinnati district in June of 1977. The business community raised and spent \$89,000 on the campaign. The media were united in support of the levy. The parent of each school child was contacted by telephone. A public relations firm which is experienced in levy campaigns was hired. Yet the levy was defeated. (Tr. 7365-79).

(7) Numerous superintendents, school board members and other experts, in addition to Dr. Norman Thomas, expressed opinions as to why school tax levies consistently fail. These witnesses consistently referred to a wellspring of resentment against property taxation, indeed against all taxation. (Tr. 492, 527, 607, 730, 900, 1037-1043, 1065, 1412, 1512, 2305). They referred to a widespread belief that the state income tax and the lottery were supposed to finance education. (Tr. 406, 685, 1037-1043). They cited a general belief that the state should support education at a higher level. (Tr. 2872, 730-731, 1420, 559-560, 903). Large city district superintendents assigned part of the voter resistance to tax levies to the fear that the money would be used for busing. (Tr. 1412, 1506, 1905). In the case of the Cincinnati district the fact that a high percentage of the children attend private schools is also given as a reason for the defeat of levies.

(8) Whatever the reasons, local property taxation is no longer a reliable source of funds with which to finance the public schools of this state. Public elementary and secondary education is not surviving at a satisfactory level throughout the state under the present system wherein the school districts are required to generate the preponderance of their funds by means of the property tax.

(B) There Are Not Enough Dollars In The Total System To Finance The Public Schools Satisfactorily

(1) The Court finds that regardless of what else may be said about Ohio's educational finance system, the general level of funding is far less than is reasonably required to establish a satisfactory level of educational services to the state's school children. The system does not even provide most of the districts with enough money to enable them to comply with the state's minimum standards. (See Finding VII(I)(1.5)). The single fact that numerous districts have had to close for lack of funds in 1976 and 1977 demonstrates that the general level of funding is intolerably low.

(2) Martin Essex conceded that there are not enough total funds from state and local sources presently in the educational finance system in Ohio to allow the districts to maintain an education of high quality throughout the state. (Tr. 319). He made a more significant admission when he stated that the present level of funding is inadequate to suit the needs of the school children "from my perspective but not from the perspective of the Legislature or citizens." (Tr. 349).

(3) Robert E. Lucas expressed the opinion that the state needs to put far more money and more effort into providing financial leadership in order to establish a fine educational program in this state. Dr. Lucas believes that the state's direct payment to the districts should be \$1200 to \$1300 per child. (Tr. 1228).

(4) Professor of Educational Administration Walter Hack of Ohio State University also expressed the opinion that in general public education in Ohio is underfunded. (Tr. 4515).

(5) University of Cincinnati Professor Robert H. Wessel, an expert in public finance, stated that in Ohio there "has been a rather substantial underemphasis in education at all levels in the State of Ohio. We just aren't spending nearly what we could or what we should, and I'm saying this both with regard

to the primary grades, the high schools and to the colleges and universities." (Tr. 3211). See Finding VI(B) in which Ohio's general level of public school funding is contrasted with the much higher levels in comparable northern, industrial states.

(C) The Property Tax Machinery Is Irrational and Unfair. Moreover, Because Property Taxation Is Not Permitted To Keep Pace With Inflation, The Receipts From The Property Tax Cannot Keep Pace With Escalating School Costs

(1) Because property taxation is the dominant source of funds for the financing of public schools, and because the formula for determining a district's entitlement to State Basic Aid is based upon the value of the district's taxable property, it is appropriate to note, at least in general, the extent to which the shortcomings and inequities in the property taxation system limit the capacity of property taxation to keep pace with inflation, and the extent to which the inequities in property taxation carry over and become inequities in school finance. The court is cognizant that the plaintiffs are not contending in this case that any of the provisions of the tax laws are unconstitutional. Rather, they have shown how these laws operate as components of the entire system of school finance and how the interplay of the tax laws and the school foundation statute produces a financing system for elementary and secondary education, the constitutionality of which they are challenging.

(2) The law governing the effect of the reappraisal of taxable property on school district revenues, both in its pre-1976 form as H.B. 455 and in its present form as H.B. 920, retards the growth of revenues from property taxation and thus retards the growth of the income of school districts. This occurs because the upward reappraisal of taxable property does not result in a corresponding increase in the tax revenue realized on the voted millage (beyond the ten mill limitation). The pre-1976 law accomplished this objective by "rolling back"

the millage to the whatever extent necessary in order to hold the tax paid on the outside millage (beyond 10 mills) to its pre-appraisal level. (O.R.C. §§ 5713.11 and 5713.111). The present law accomplishes the same objective with a tax reduction factor applied to the tax bill, even though the millage is no longer rolled back. (O.R.C. § 319.301). The present law, however, does not apply the reduction factor to personal property and, unlike the prior law, permits personal property to be taxed as its reappraised value.

The effect of this circuit-breaker mechanism is to prevent real property tax revenues from keeping pace with inflation, as revenues from other forms of taxation such as income and sales taxation are able to do. This phenomenon has had a particularly debilitating effect upon the school districts because more than 60% of the total revenues for financing the public schools emanate from the property tax. (Finding VI(C)(3)).

(3) Several characteristics of the property tax system which carry over into the school foundation formula have brought about serious inequities in the operation of that formula:

(3.1) The reappraisal of school district's taxable property raises its valuation per pupil and thus reduces the number of dollars per pupil per mill which the district receives in state basic aid. Yet, at the same time, the district receives no offsetting benefit from that reappraisal in increased local revenue from real property taxation, except on its inside millage.

(3.2) Those districts in which property was reappraised prior to 1976 and which had their millages rolled back automatically, sustained additional losses in state basic aid under the so-called "reward for effort" calculation to the extent that their millage rollbacks reduced their equalized mills below 30.³⁸ The effect of those two reductions, which were applied

³⁸ The law provided that the rollback shall not reduce a district's millage below 20 so as to disqualify it totally for formula purposes regardless of how far back its millage is reduced for the purpose of limiting its local yield.

to numerous districts, is what Superintendent Huelsman of the St. Henry district called the "double whammy." (Tr. 3525-6). To make matters worse, the rollbacks which occurred under the prior law are permanent (O.R.C. § 5713.11) and, unless the districts so affected can obtain voter approval to raise their tax rates, they must remain disadvantaged in that manner.

(3.3) Since, however, many districts did not undergo reappraisal until after H.B. 920 was passed in 1976, the millage rates of those districts were not rolled back as were those of districts which went through reappraisal under the old law. The post-1976 reappraisal districts thus avoided the formula reduction caused by rollbacks while other districts were adversely affected. This is a major inequity in the system. The Staff Report to the Education Review Committee of the Ohio General Assembly dated July 21, 1976, (Defendants' Exh. II-A-9) states:

Since the guaranteed yield formula uses actual assessed millage rates in reappraised counties, and since Amended Substitute House Bill 920 continues the millage rate rollbacks in counties reappraised before 1976 but does not roll back millage rates in counties reappraised in 1976 or 1977, the present provisions under Senate Bill 170 and House Bill 920 can be expected to have a substantial disequalizing impact on the operation of the guaranteed yield formula beginning in fiscal year 1978.

(3.4) Another inequity in the system which is an outgrowth of H.B. 920 is that those districts in which personal property used in business represents a high percentage of taxable property reap an advantage in local revenue as compared with the districts which have a low percentage of personal property on their tax rolls. By and large, the districts with the higher proportions of personal property are the industrial enclaves, such as Lordstown, Cuyahoga Heights, and St. Bernard, which have large concentrations of industrial property. Those are the districts which are property-rich and

well-financed already. (Tr. 4901, 02). Plaintiffs' Exh. 259 illustrates that a district's formula entitlement to state basic aid may be substantially greater than that of another district, solely because a higher percentage of that district's taxable property is personal property which is not subject to the tax reduction factor. Thus, H.B. 920 has introduced two additional disequalizing factors into the education finance system.

(3.5) The plaintiffs also showed through the testimony of James L. Moore, supervisor of the Department of Tax Equalization's Real Property Equalization Section (Tr. 3927-83, 4098-4116), and the Department of Taxation documents (Plaintiffs' Exh. 270-285), and the testimony of Carl H. Heimerdinger, Clerk-Treasurer of the Cincinnati Board of Education (Tr. 4120-4141), that inequalities and whims in the system of appraising the taxable property of school districts not only produce inequities in the local fund raising capacities of school districts but also cause districts to receive inequitable treatment under the foundation formula.

(3.6) There are disparities in the assessment sales ratios³⁹ among the 88 counties in Ohio and those disparities create disparities in the amount of state basic aid received by the school districts. (Tr. 4126). Plaintiffs' Exh. 286 demonstrates the impact of the disparities in the assessment sales ratios on the basic state aid received by two theoretical districts which represent actual Ohio school districts. The following assumptions are made concerning the two districts.

(a) District A has an average assessment sales ratio of 28% and District B has an average assessment sales ratio of 35%.

(b) Both districts have identical property which is valued at \$100,000,000.

³⁹ The average assessment sales ratio represents the percent of the assessed valuation of real property in the district to the actual valuation of the real property based upon actual arms-length sales. (Tr. 4124).

- (c) Each district has 1000 pupils.
- (d) The districts generate the same local revenue — \$840,000 or \$840 per pupil.
- (e) But to do this, district A must levy 30 mills and District B must levy 24 mills to compensate for A's lower assessment sales ratio and B's higher assessment sales ratio.
- (f) Since each district has the same number of pupils, district A has a valuation of \$28,000 per pupil. This is arrived at by multiplying the true value times the average assessment sales ratio ($100,000,000 \times 28\%$) divided by the number of pupils (1,000). Similarly, District B has a valuation of 35,000 per pupil.

Since District A raises \$28 per pupil per mill and District B raises \$35 per pupil per mill, the amount of basic state aid to which they are each entitled differs as follows:

District A:

$$\begin{aligned} (\$48 - \$28) \times 1,000 \text{ pupils} \times 20 \text{ mills} &= \$400,000 \\ (\$42 - \$28) \times 1,000 \text{ pupils} \times 10 \text{ mills} &= \$140,000 \end{aligned}$$

Total Basic Aid (Full Funding) \$540,000

District B:

$$\begin{aligned} (\$48 - \$35) \times 1,000 \text{ pupils} \times 20 \text{ mills} &= \$260,000 \\ (\$42 - \$35) \times 1,000 \text{ pupils} \times 4 \text{ mills} &= \$ 28,000 \end{aligned}$$

Total Basic Aid (Full Funding) \$288,000

- (3.7) Thus for efforts yielding identical sums of local revenue per pupil on identical property, District A, with the higher average assessment sales ratio, receives less state basic aid than District B, with its lower average assessment sales ratio. (Tr. 4130).
- (3.8) The valuation adjustment factor does not correct for

these disparities in the assessment sales ratio of districts re-appraised since 1971 since the factor is a legislative factor of 1,000 and does not correct for comparative levels of assessment. (Tr. 4732).

(3.9) Districts with higher valued properties are generally under-assessed and the districts with lower valued properties are generally over-assessed. (Tr. 4116, 4136).

(3.10) The disparities in the levels of the assessment ratios which were in existence in 1975 have been frozen into the present school finance formula. Pursuant to the present formula, State Basic Aid is distributed based upon 1975 entitlements. Thus districts, which were disadvantaged by their assessment value ratios in 1975, continue to have that disadvantage. (Tr. 4139-4138).

(4) It is clear from an analysis of the law and the evidence that, in enacting various provisions which were designed to provide taxpayer relief in the property tax machinery, the General Assembly has undermined the potential of the foundation formula to provide "equal yield for equal effort" which is its purported purpose.

(D) The System Absolutely Neglects The Capital Needs Of The School Districts

(1) The plaintiffs have proved, and the Court finds, that the buildings and other physical facilities in most Ohio school districts are obsolete, inadequate and poorly maintained because the state provides no financial assistance to the school districts to provide for their capital needs. Those needs must be financed through capital improvement bond issues which require voter approval. The evidence demonstrates that, during the period 1971-1975, only 27% of the school bond issues submitted to the voters of Ohio's school districts were successful. (Finding VIII-I(A)(3.2)). The same negative voter attitude which occasioned the defeat of school tax levies in

Ohio has caused school bond issues to be voted down at an even greater rate. As a result, the physical plants of most of the school districts in Ohio are in a condition of general inadequacy, as are most of the districts' instructional programs.

(2) The physical plant of a school district is educationally significant. (See Findings VII(E)(5) and (16)). Thus, the condition of obsolete, poorly maintained school buildings which exists throughout the state is educationally detrimental to the school children of Ohio. This is particularly true for children from disadvantaged backgrounds. Robert E. Lucas testified that a positive school environment is especially important to the child from a deprived background. It develops pride. One of the things that the school system can do is open up a whole new world of hope and vision and idealism. (Tr. 1269-70).

(3) The failure of the General Assembly to make provisions for the plants and facilities of the school districts represents an omission to provide for one of the essential elements of the public educational system.

(4) Marion J. Conrad, Phd., Professor Emeritus at Ohio State University, is an expert in the field of the capital needs of school districts. He headed a field service unit and for 25 years assisted school districts throughout the state with their facilities planning. (Tr. 3774-75). Dr. Conrad was the only witness who addressed himself in a comprehensive manner to the issue of the capital needs of school districts. Dr. Conrad has been personally involved in facilities analyses in 200 to 300 different school districts in Ohio, including every type of district, and is familiar with the conditions of school facilities in many other states in which he has done consulting work. (Tr. 3780-81).

(5) Dr. Conrad testified that Ohio has not performed any role in assisting the school districts with the financing and construction of school facilities, as have many states. "We

have provided no financial assistance to the school districts of the state, and provided practically no assistance in helping them study their needs or in helping them to develop good educational facilities." (Tr. 3788).

(6) Three-fourths of the states provide some kind of assistance to school districts in the facilities area. Half of the states provide direct assistance and one-fourth provide assistance only for specialized programs such as special education or vocational education. (Tr. 3789). Maryland and Hawaii provide for 100% of the capital needs of the districts. Tr. 3789). Every one of Ohio's neighboring states provides assistance to districts on a percentage basis. (Tr. 3789-90).

(7) There is a tremendous variation in the school facilities throughout Ohio. There are only a few districts which do not have unmet qualitative needs. Very few districts have learning resource centers in each school building. Most of the small rural districts and some of the larger city districts have poor educational facilities. (Tr. 3793-4).

(8) In Dr. Conrad's opinion, "second only to quality teaching, . . . facilities have the second-greatest impact upon the quality of educational opportunities for young people. . . ." (Tr. 3795). In recent years considerable research has been done on the effect of environment upon learning. All environmental controls, including aerial environment, phonic environment and lighting environment, have impact upon the learner. (Tr. 3795). Research has shown that carpeting a classroom has a positive effect upon student achievement. (Tr. 3797).

(9) By far the great majority of the districts provide for their capital needs with bond issues. Their capacity to do that is limited to 9% of their assessed valuation, however.⁴⁰ There are a few wealthy districts which provide for capital outlay by direct taxation. (Tr. 3798). See Finding VI(H)

⁴⁰ Section 133.04 of the Ohio Revised Code.

(4.16)(e) that the Princeton City District in Hamilton County finances its facilities in that manner.

(10) Unless the state provides financial assistance to the districts for their capital needs, the educational facilities in the state will continue to deteriorate. (Tr. 3809-10).

(11) There are several feasible methods for the state to employ to financially assist the districts in order to enable them to provide adequately for their plant and facility requirements. In one feasible system, outlined by Dr. Conrad on pages 3800-3809 of the transcript, the state would aid the districts directly in order to pay their existing capital debts and would also loan the districts funds for further capital improvements. The money required to provide this assistance to the districts could come from state bond issues. In order to qualify for a loan, a district would be required to complete a comprehensive district-wide study of its needs in accordance with state guidelines. (Tr. 3808-9).

(12) Dr. Conrad was not cross-examined and the defendants presented no evidence to controvert his testimony. The Court thus finds that the General Assembly has completely abdicated the responsibility to provide for the plant and facility needs of the school districts in spite of the fact that the means to do so have been available.

(13) The Court also finds that the present system has a disequalizing effect upon the educational facilities of the school districts because differences in property wealth among the districts equate to differences in the capacities of the districts to construct school facilities financed through the passage of bond issues. Thus, the disparity in educational resources based on school district wealth carries over into the area of plant and facilities. The state system leaves the districts where their own resources have placed them insofar as their capital needs are concerned. And their own resources have placed them in very unequal positions.

(13.1) The Report of the Syracuse University Research Organization entitled "Financing and Administering Public

Education in Ohio", which was presented to the Education Review Committee in June of 1975, contained a section designated State Aid for School Construction. One of its authors, Russell C. Harris, who was called as a witness by the defendants, acknowledged that the statement which appears on page 419 of the Report, "The State of Ohio plays a very minor role in financing local school facilities construction.", is accurate and is true today. (Tr. 7177). Mr. Harris also acknowledged that the statement which appears on page 421 of the Report, "the responsibility for paying school housing falls almost exclusively on local districts.", is accurate and true today. (Tr. 7184). He further acknowledged the current accuracy of the statement on page 422 of the Report, that "Quite clearly Ohio places very unequal burdens on local taxpayers when it comes to providing housing for their children." The Report also states, on page 427, "There can be no doubt that Ohio would fail to conform with even the most generous definition of fiscal neutrality in terms of the way its school building programs are financed." (Tr. 7186).

(14) The Court also finds that the limitations which restrain the districts' capacities to raise debt mills for capital improvements severely limit the capacities of the districts to raise mills for current operating expenses. The higher a district's debt millage rate, the stronger is the negative effect upon the district's millage rate for operating purposes. This undermines the "reward for effort" feature of the foundation formula by impairing a district's tax "effort." Thus, the state's neglect of the capital needs of the school districts substantially undercuts the efficacy of the present funding formula.

(14.1) Mr. Harris acknowledged the validity of the statement which appears on page 428 of the above-referenced report that, "To the extent that high debt millage districts levy lower operating millage rates as a result of their debt commitments, they will be less responsive to the incentives inherent in the guaranteed yield formula." (Tr. 7191). He also acknowledged the truth of the following statement from

page 427 of the Report: "If a pupil attends school in a relatively poor high-debt millage district, the quality of instructional services made available for his education can be expected to be limited by the high price being paid for his brick and mortar." (Tr. 7189-90). The Report states further, on page 428, "Therefore, if each school district is to begin responding with equal footing to a new basic aid formula, state participation in paying for the cost of school facilities is imperative." (Tr. 7192).

VIII-II. DEFICIENCIES AND INEQUITIES IN THE STATUTORY SCHEME INCLUDING THE SCHOOL FOUNDATION LAW

(A) Ohio's Finance System Is Characterized By Revenue And Service Disparities Among The Districts Which Result From Disparities In Property Wealth And Income Wealth. The Statutory Scheme Does Not Compensate For Those Disparities

(1) The Ohio system for financing public education relies on the local property tax base to such a degree that the extent of the opportunities of a child to receive educational services is determined primarily by the size of the tax base of the school district where he lives.⁴¹ (Tr. 3389; Plaintiffs' Exh. 186,⁴² 187).

(2) There are huge variations in property valuations among the 617 school districts in Ohio. (Tr. 3389, Plaintiffs' Exh. 182).

(3) The range in equalized property valuation per pupil among the school districts of Ohio in 1975-76 was from \$282,-897 to \$4,286, a ratio of 66 to 1. From the 90th percentile of

⁴¹ This and other findings contained in this section (VIII-II(A)) are based on Plaintiffs' Exhibits 178-256 which were compiled and analyzed by Dr. Jay Moskowitz from data provided by the State of Ohio, Department of Education. The sources of the data, containing financial and other information for each school district in Ohio, were the following Dept. of Education forms: Form 25, Annual Financial Report, 1974-75 and 1975-76; Form SF-12 for 1974-75 (run 2/1/76) and 1975-76 (run 9/8/76); and Form 5B, Fall Statistical Report 1974-75. Dr. Moskowitz is the assistant director of the Education Policy Research Institute of the Educational Testing Service, Princeton, New Jersey.

⁴² The titles of Plaintiffs' Exhibit Numbers 182, 183, 186, 190, 193, 194, 199, 202, 215, 219, 220, 221, 233, 236, 239, 241 and 242, reproduced herein, have been expanded to describe the organization of the data consistent with the witness' testimony (*i.e.* ". . . for deciles of pupils ranked by equalized valuation").

districts to the 10th percentile of districts it was from \$32,254 to \$11,735, a ratio of 2.8 to 1. (Tr. 3298, 3389, Plaintiffs' Exh. 178, reproduced at end of section).

(4) As a result of these disparities in equalized property valuation per pupil, the relative abilities of the districts to raise revenue through property taxation is similarly disparate. A levy of 20 mills raises \$86 per pupil in the district whose equalized valuation is \$4286 per pupil. That same levy raises \$5658 per pupil in the district whose equalized valuation is \$282,897 per pupil. Five thousand six hundred and fifty-eight dollars per pupil far exceeds any amount which any district is currently spending. Districts in the 90th percentile would raise \$876 per pupil with a levy of 20 mills, compared to \$209 per pupil which those districts in the 10th percentile would raise with such a levy. (Tr. 3299, 3390, Plaintiffs' Exh. 179, reproduced at end of section).

(5) When all of the pupils in the state are grouped into deciles ranked by equalized valuation per pupil, with each decile representing approximately 220,000 pupils (10% of the pupils in the state) (Tr. 3302, 3303, Plaintiffs' Exh. 182, reproduced at end of section), the following patterns are perceived in the relationship between the weighted standard mean (average) of local yield per full-time equivalent (FTE) pupil, basic state aid per FTE pupil and local yield plus basic state aid per FTE pupil, for each decile of pupils:

(5.1) Generally, as property wealth goes up, local yield goes up, with one slight exception in the \$24,663 to \$25,098 range. The pattern of correlation between property wealth and local tax yield is consistently linear. Districts which are poor in property wealth raise less money locally than do those which are rich in property wealth. The range in local yield from the lowest decile to the highest decile of pupils, ranked by valuation, is almost 4 to 1. When the top and bottom deciles are further broken out, to reflect the high and low extremes, the range in local tax yield is 6 to 1. (Tr. 3307, 3391, Plaintiffs' Exh. 183, 184, reproduced at end of section).

(5.2) On the average, basic state aid is distributed in inverse proportion to property valuation. (Tr. 3391, Plaintiffs' Exh. 183, 186).

(5.3) However, Exhibits 183 and 184 also show that basic state aid, which is that portion of state support which is supposed to compensate for property wealth differentials, fails to do so. Even with basic aid included, the range among the pupil deciles of local yield plus basic aid is approximately 2 to 1. This failure of basic state aid to compensate for disparities in local revenue results from the fact that local tax revenues constitute more than 60% of the total funds in the educational system. (Tr. 3308, Plaintiffs' Exh. 183).

(5.4) The sum of locally raised revenues and state basic aid ("guaranteed yield") remains primarily a function of the property wealth of a school district. (Tr. 3391, Plaintiffs' Exh. 183).

(6) This relationship would have been maintained even if the present formula had been fully funded in 1975-76. Basic aid would have constituted almost a flat grant to districts with property valuations between \$20,975 and \$27,837. (Tr. 3391, 3336, Plaintiffs' Exh. 208).

(7) The disparities among school districts in local yield plus basic state aid remained the same in 1975-76 as in 1974-75, the last year of the operation the old system. (Tr. 3311, Plaintiffs' Exh. 185). The range among the deciles in local yield plus basic state aid continued to be approximately 2 to 1. (Plaintiffs' Exh. 185).

(8) In 1975-76, the first year of operation of the present system, the pattern for the deciles of pupils ranked by valuation demonstrates that, generally, districts with the greatest property wealth received both higher percentage and higher dollar increases from the previous year in local yield plus basic state aid per FTE pupil than did the districts with the lowest property wealth. The districts in the first decile (low-

est property wealth) received an increase of only \$28.34 per pupil or 3.98% while the districts in the tenth decile (wealthiest districts) received an increase of \$54.09 or 4.40% (Tr. 3311, Plaintiffs' Exh. 185).

(9) In 1975-76, the State provided more total state aid per FTE pupil (categorical aid plus basic state support) to school districts with lower property wealth than to school districts with higher property wealth. However, since categorical aid is not intended to equalize local revenues, the range of the total state support per FTE pupil is concentrated around a \$400 mean average. (Tr. 3312, Plaintiffs' Exh. 186, reproduced at end of section).

(10) Categorical aid (the non-equalizing portion of state aid) is distributed to school districts without regard to a district's fiscal capacity to support its categorical services. Therefore, it does not compensate for revenue disparities based on property wealth. (Tr. 3393, Plaintiffs' Exh. 245-256).

(11) The equalizing power of total state support (basic aid plus categorical aid) in 1975-76 was not strong enough to break the domination of local property wealth as the major determinant of the level of total state and local support of a school district. (Tr. 3377, Plaintiffs' Exh. 244).

(12) Therefore, the disparities in 1975-76 total state and local support per pupil (for deciles of pupils ranked by equalized valuation) were the direct result of the disparities in property valuation. (Tr. 3312, Plaintiffs' Exh. 186).

(13) The school districts in the first (poorest) decile of pupils ranked by valuation had an average of \$857 per FTE pupil in Total State and Local Support while the districts in the 10th decile (wealthiest) had an average of \$1,376.05 per FTE pupil in 1975-76. School districts which have high property valuations have considerably more dollars in total local and state support than those with lower property valuations. (Tr. 3312, Plaintiffs' Exh. 186).

(14) When the first and tenth deciles are broken down further, the range in the mean of Total State and Local Support per FTE pupil is \$826.23 to \$1,652.45 or 2 to 1. (Tr. 3313, Plaintiffs' Exh. 187). When the range of the actual highest to lowest is calculated rather than the mean within each decile, the range is 4.9 to 1 or \$723 per FTE pupil in the poorest district and \$3563 in the wealthiest district. (Tr. 3313, Plaintiffs' Exh. 180, reproduced at end of section).

(15) As a result of disparities in property valuation per pupil, the district with the most dollars per pupil in total state plus local support had \$3563 per pupil, while the district with the fewest dollars had \$723 per pupil. That is a ratio of 4.9 to 1. If the 62 districts ranked highest and the 62 districts ranked lowest in total support are excluded, the range in total support is still almost 2:1 (\$1460 per pupil in the 90th percentile and \$776 per pupil in the 10th). (Tr. 3301, Plaintiffs' Exh. 180).

(16) Had the formula been fully funded that year (1975-76), the ranges would have been reduced only very slightly from 4.9:1 to 4:1 (\$3,489 v. \$874) from the highest to the lowest and from 2:1 to 1.5:1 (\$1551 v. \$1048) for the central 80% core of districts. Substantial disparities in total support which are based on property wealth would not be eliminated even if the formula were fully funded. (Tr. 3409, Plaintiffs' Exh. 207, reproduced at end of section).

(17) Not only are there very substantial disparities among Ohio's school districts in the amount of total state and local resources for education, but in 1975-76 the overwhelming majority of Ohio's pupils attended school in districts whose total educational resources were less than \$1100 per pupil. (Plaintiffs' Exh. 181).

(18) In 1975-76, the first year of operation of the present school finance system, the school districts with lower property values generally did not receive a larger percentage of dollar increase from the previous year in Total State Aid per FTE

pupil than the districts with higher property values. The districts in the first decile (lowest property valuation) received an additional \$8.38 in total State Aid per FTE pupil or a 1.52% increase while the districts in the 9th decile received an additional \$5.25 or 1.68% increase. Districts in the 6th decile received an additional \$32.68 in total state aid per FTE pupil — or an 8.61% increase. (Tr. 3314, Plaintiffs' Exh. 188).

(19) There is no pattern between a district's property valuation, as used in the state aid formula, and its equalized tax rates. (Tr. 3406, Plaintiffs' Exh. 189).

(20) Property-poor districts do not levy higher school taxes than property-rich districts. (Tr. 3406, Plaintiffs' Exh. 189).

(21) With essentially the same tax rate, pupils in the districts with the highest property valuation (ranked by deciles) are supported by local revenues four times greater than the revenues supporting pupils in districts in the lowest property valuation. (Tr. 3407, Plaintiffs' Exh. 189).

(22) In 1975-76, the average tax effort of school districts in the first (property-poorest) decile of pupils was substantially similar to the tax effort of the school districts in the top quarter of the 10th (property-wealthiest) decile of pupils (\$25.92 to \$25.89). However, the local revenues generated by that tax effort were four times greater in the wealthy group than in the poor group (\$1,464 v. \$296). (Tr. 3315, 3407, Plaintiffs' Exh. 189).

(23) The state aid system does not bridge that gap in any way. (Tr. 3315).

(24) The average tax rate of the school districts in the wealthiest decile of pupils is lower than the rate for some of the districts in deciles with far lower equalized valuations per pupil. (Tr. 3316).

(25) Since local yield is determined by multiplying the millage rate times the valuation, an additional mill may raise

\$10,000 in a property poor district and \$2,000,000 in a property rich district with the same number of pupils. (Tr. 3316).

(26) If districts in each decile of pupils had levied 30 mills in 1975-76, there would have been a 4 to 1 disparity in per pupil local revenue between the districts in the first decile and those in the 10th decile (\$342.05 compared to \$1285.01) (Tr. 3317, Plaintiffs' Exh. 190, reproduced at end of section).

(27) The median family income of Ohio school districts varies substantially from a low of \$4574 to a high of \$29,048. (Tr. 3319, Plaintiffs' Exh. 193, reproduced at end of section).

(28) When all pupils are grouped in deciles ranked by the median family income of their districts, with each decile representing approximately 220,000 pupils (10% of the pupils in the state), the following distribution occurs: (Tr. 3319, Plaintiffs' Exh. 193).

(29) Generally, the districts which have the lowest median family incomes also have the lowest equalized valuations per pupil and the districts with the highest median family incomes have the highest equalized valuations per pupil. There is less of a linear relationship in the middle deciles of pupils ranked by income because many of the large cities have highly valued property and low median family income and thus fall into the middle income deciles. Thus, the property wealth-income relationship is less consistent for large city districts than for any other type of district. (Tr. 3319, Plaintiffs' Exh. 205, 206).

(30) Districts with the lowest property valuations per pupil have the lowest median family incomes, and districts with the highest property valuations have the highest median family incomes. (Tr. 3407, Plaintiffs' Exh. 191).

(31) As a result, the poorest districts according to median family income have the lowest local yield per pupil and the highest median family income districts have the highest local yield. On average, the districts with the highest median

family incomes have local revenues 130% higher than the districts with the lowest median family income. (Tr. 3407, Plaintiffs' Exh. 194, reproduced at end of section).

(32) This disparity is reduced only partially by the addition of basic state aid to the district's local revenues. This is demonstrated by the fact that low median family income districts have 62% less in local yield plus basic state aid than high median family income districts. (Tr. 3407, Plaintiffs' Exh. 194).

(33) Local yield plus basic state aid per FTE pupil increases as median family income increases. The local yield plus basic state aid per pupil for school districts in the first decile (lowest median family income) was \$733.32 and \$1,193.13 for school districts in the 10th decile (highest median family income) in 1975-76. (Tr. 3322, Plaintiffs' Exh. 194).

(34) When the first and tenth deciles of Plaintiffs' Exh. 194 are broken down into four equal groups of pupils, the local yield for the lowest category is only \$333.14 per pupil while the local yield for the highest group is \$1,115.57 (Tr. 3323, Plaintiffs' Exh. 195).

(35) Basic state aid per FTE pupil is not consistently linearly related to median family income because although the amount of state basic aid per FTE pupil decreased from the first decile to the fifth decile, it increased in the sixth and seventh decile where median family income is higher. (Tr. 3322, Plaintiffs' Exh. 194).

(36) Hence, basic state aid does not (and is not intended to) equalize for income wealth. (Tr. 3322).

(37) However, the major determinant of a district's ability to tax itself is its wealth as measured by median family income. (Tr. 3409, Plaintiffs' Exh. 203).

(38) Local yield per FTE pupil generally increases as median family income increases because district with higher

median family incomes have higher school tax rates. (Tr. 3321, Plaintiffs' Exh. 202, reproduced at end of section).

(39) The school districts with the highest median family income have substantially higher school tax rates than the districts with low median family income. The present school finance system rewards districts with higher incomes by rewarding higher school tax rates. (Tr. 3328-3329).

(40) In 1974-75 the Legislature appropriated an additional \$60.00 per pupil in supplemental basic state aid for each school district in the state which participated in the formula without regard to the educational needs of the students or to the wealth of the district. (Tr. 3324).

(41) In 1975-76, each decile of pupils (grouped by income) was supported, on the average, by less than Basic Aid per FTE pupil than in 1974-75 (including the \$60.00 supplement in the amount of Basic Aid). (Tr. 3324, Plaintiffs' Exh. 196).

(42) Districts in the low income deciles suffered a greater loss in Basic State Aid per FTE pupil in 1975-76 than did the high income districts. When the first and tenth deciles of Plaintiffs' Exhibit 196 are broken out into four equal pupil groups, the percentage of loss in state basic aid per FTE pupil from 1974-75 to 1975-76 for each of those four groups in the first (poorest) decile is -6.6%, -6.2%, -6.6% and -5.5%. On the other hand, the percentage of change in basic state aid per FTE pupil from 1974-75 to 1975-76 for each of the four groups in the tenth decile is +1.1%, -1.1%, -3.8%, -5.2% (Plaintiffs' Exh. 197). The percent of loss for the second through ninth deciles were the following: -1.9%, -6.5%, -1.6% -2.9%, -2.4%, -0.1%, -0.7%, and -2.0%. (Tr. 3325, Plaintiffs' Exh. 197).

(43) The addition of categorical aid (which is non-equalizing) to basic state aid does not change the pattern of revenue disparities based on median family income. (Tr. 3326).

(44) When all pupils are grouped into deciles, ranked by median family income, the variation in the total state aid per FTE pupil between districts in the lowest decile and districts in the highest decile in 1975-76 was only approximately \$100, (\$457.74 and 331.08). Thus, total state aid constituted almost a flat grant to districts. (Tr. 3326, Plaintiffs' Exh. 198).

(45) The variation in the local yield per FTE pupil is a ratio of more than 2 to 1 for deciles of pupils ranked by income (\$410.93 and \$945.64). This results in substantial variations in total state and local support per FTE pupil between districts in the highest decile and districts in the lowest decile. (Tr. 3327, Plaintiffs' Exh. 199, reproduced at end of section).

(46) When the first and tenth decile of pupils (Plaintiffs' Exh. 199) are broken out into four equal pupil groups, the range in local yield per FTE pupil is \$333.14 to \$1,115.57 or a ratio of almost 4 to 1. As a result, the range in Total State-Local Support per FTE pupil becomes \$840.05 and \$1,400.51. (Tr. 3327, Plaintiffs' Exh. 200).

(47) If the formula had been fully funded in 1975-76, there would still have been a 4:1 ratio of disparity in local yield resulting in a disparity in total state and local support per pupil ranging from \$1,075.79 to \$1,656.07. (Tr. 3341, Plaintiffs' Exh. 216).

(48) If the formula were fully funded, there would still be substantial disparities in total state and local support per pupil which are based on wealth as measured by median family income (rather than property valuation). Districts with greater income wealth have greater total and local support than districts with less income wealth. (Tr. 3339, Plaintiffs' Exh. 215, 216, reproduced at end of section).

(49) In light of the fact that median family income is a very strong determinant of tax rate (Tr. 3409, Plaintiffs' Exh. 203), the only school districts which can actually exercise local control are those districts which have median family in-

comes high enough to support tax rates which will generate sufficient money to allow the districts to exercise choice concerning the educational services offered to the students. (Tr. 3327).

(50) The only school districts with sufficient income wealth to be able to exercise such local control are those 48 districts which enroll the pupils in the wealthiest decile of pupils (ranked by median family income) and which have incomes ranging from \$12,766 to \$29,048. (Tr. 3327, Plaintiffs' Exh. 193).

(51) Districts with the highest property values also tend to have the highest median family income. (Tr. 3333-3384, Plaintiffs' Exh. 205, 206).

(52) Districts with the lowest median family incomes generally have the lowest property valuations and must tax themselves at a substantially higher rate in order to obtain the same local revenues as property-rich districts. (Tr. 3409, Plaintiffs' Exh. 204).

(53) As a result of the income-property wealth relationship, the local tax rate required to raise \$1200 varies considerably among districts with high median family income and those with low median family income. School districts with median family incomes in the first (lowest) decile require a tax of \$65.48 to raise \$1200 per FTE pupil while school districts with median family incomes in the tenth decile require only a \$43.17 tax rate. (Tr. 3322, Plaintiffs' Exh. 204).

(54) Similarly, the local yield per FTE pupil from a levy of 30 mills varies considerably among the districts according to their median family income. A school district with a median family income in the first decile would raise only \$549.81 per FTE pupil with 30 mills while a district with a median family income in the tenth decile would raise \$833.87 with a tax of 30 mills. (Tr. 3322, Plaintiffs' Exh. 204).

(55) Some school districts have school tax rates substan-

tially lower than the weighted average rate for the districts in the first decile and some districts have school tax rates substantially higher than the weighted average of the districts in the tenth decile. For example, the Shaker Heights School District presently levies 62 mills. (Tr. 3329-30, Plaintiffs' Exh. 203).

(56) In 1975-76 there were significant disparities in the amounts of total state and local revenues available to school districts for the purchase of educational services. These disparities were the direct result of the disparities in the districts' wealth — primarily property wealth, but also income wealth. (Tr. 3312, 3327, 3378, 3419, Plaintiffs' Exh. 186, 199, 244).

(57) Neither the amount of the total state aid nor the distribution pattern of total state aid can overcome the dominant influence of local property wealth on the state funding system. The total support per pupil of a school district remains primarily a function of the amount of that district's property wealth. (Tr. 3378, Plaintiffs' Exh. 244, reproduced at end of section).

(58) Adding more dollars to the present funding formula reduces slightly, but in no way eliminates, the wealth-based disparities in total support. (Tr. 3410).

(59) If the present school finance formula had been fully funded in 1975-76, the local yield of a school district would still have dominated the district's level of total support. Districts with higher property valuations per pupil would have had more total state and local support per pupil than districts with lower property valuations. (Tr. 3337, Plaintiff's Exh. 210, 211). Similarly, districts with higher median family incomes would have had higher total support levels than districts with lower median family incomes. (Tr. 3337, 3410, Plaintiffs' Exh. 215, 216).

(60) Within Hamilton County great disparities exist in local yield per FTE pupil, in tax rates, in valuation per FTE

pupil and in total state and local support per FTE pupil. The St. Bernard School District has \$101,184.56 equalized valuation per FTE pupil and raises \$1,927.89 per pupil with a levy of 19.05 mills. The Loveland School District has an equalized valuation of only \$12,008.04 per FTE pupil and raises only \$794.99 with a levy of 37.23 mills. The Total Support available per pupil in the St. Bernard School District (which receives no state aid since it levies less than 20 mills) is \$1,927.89 per pupil compared to only \$980.56 in the Loveland School District (which does receive state aid). (Tr. 3348-3345, Plaintiffs' Exh. 217, 217A).

(61) On the average, Ohio's 15 largest cities are poorer in median family income than the state average, but they tax themselves at a rate which is higher than the state average. However, this extra tax effort produced total revenues which were only very slightly higher than the state average. (Tr. 3411, Plaintiffs' Exh. 218).

(62) The amount of basic state aid per pupil received by most large cities in Ohio is less than the weighted average amount of basic state aid received by all of the districts in the State. The state average was \$279.84 per pupil, but many of the large cities received \$250 or less in basic state aid per FTE pupil. (Tr. 3348, Plaintiffs' Exh. 218 and 218A).

(63) The wealth-based disparities in the amount of total funds available to Ohio's school districts for the purchase of educational services bear a direct relationship to the disparities which exist among the districts in staffing patterns, salaries, total expenditures and expenditures for instruction (and all components thereof). (Tr. 3351).

(64) There is a statistically significant, positive relationship between the total support available and the services provided. Districts with more money are not spending that money on "frills" or on higher salaries alone. They are spending more per pupil for each component of instruction including textbooks, equipment, supplies and libraries. They also are able

to hire, and they do hire more teachers, administrators and support personnel. They also pay higher salaries. (Tr. 3351).

(65) The disparities in educational expenditures and services which existed in 1974-75 continued to exist in substantially the same degree in 1975-76, the first year of the new law, even though the absolute expenditures were slightly higher for most categories in the second year. (Tr. 337).

(66) When all the pupils in Ohio are grouped into equal deciles ranked by total state and local support per pupil in 1974-75, the following relationships between total support and staffing are apparent:

(66.1) As the total state and local support per pupil increases, the number of professional staff per 1,000 pupils increases. (Tr. 3351, Plaintiffs' Exh. 219, reproduced at end of section).

(66.2) As the total state and local support per pupil increases, the number of classroom teachers per 1,000 pupils increases. (Tr. 3351, Plaintiffs' Exh. 219).

(66.3) As the total state and local support per pupil increases, the number of administrative staff, pupil service personnel and library staff per 1,000 pupils increases. (Tr. 3351, Plaintiffs' Exh. 219).

(66.4) As the total state and local support per pupil increases, the number of guidance counselors, psychologists and special therapists per 1,000 pupils increases. (Tr. 3351, Plaintiffs' Exh. 220, reproduced at end of section).

(67) These relationships between total state and local support and staffing are also demonstrated by the following statistically significant positive correlations between personnel and total state and local support:

Professional Personnel Per 1,000 Pupils	.67
Classroom teachers Per 1,000 Pupils	.63
Administrative staff Per 1,000 Pupils	.39
Library staff Per 1,000 Pupils	.44
Guidance Counselors Per 1,000 Pupils	.24
Pupil Service Personnel Per 1,000 Pupils	.23

(Tr. 3351).

(68) As the 1974-75 total state and local support increases from the poorest to the wealthiest deciles, the number of classroom teachers per 1,000 pupils increases by about 25% (42.79 v. 51.77); as does the average teacher salary (\$9,139 v. \$12,145). Statistically, there was a positive correlation of .53 for total support and average teacher salary. (Tr. 3359, Plaintiffs' Exh. 221, reproduced at end of section).

(69) Similarly, as the total support increases the number of administrative staff per 1000 pupils increase by about 25% (2.76 v. 3.95) as does the average administrative salary between total support and average administrative salary (\$16,193 v. \$20,307). Statistically, there was a positive correlation of .26. (Tr. 3359, Plaintiffs' Exh. 221).

(70) Generally, as 1974-75 total state and local support increases, total expenditures per pupil, administrative expenditures per pupil and instructional expenditures per pupil (including all of its components) increase. (Tr. 3360, Plaintiffs' Exh. 222).

(71) Total expenditures per pupil (1974-75) ranged from a low of \$815.43 per pupil in the decile of pupils with the lowest support to \$1,519.72 per pupil in the highest — a ratio of almost 2:1. (Tr. 3363, Plaintiffs Exh. 222).

(72) This 2:1 expenditure ratio also existed for the instructional expenditures per pupil and for each of the following major components of expenditures for instruction:

Expenditure Per Pupil For:	Range (high to low decile)
Instruction (total)	2:1
Coordinate Activities	3:1
Libraries	3:1
Educational Materials	2:1
Educational Equipment	2:1

(Tr. 3361-3363, Plaintiffs' Exh. 222, 223).

(73) In addition, districts in the wealthiest decile are able to spend twice as much per pupil for plant operation and maintenance as those in the poorest decile. (Tr. 3361, Plaintiffs' Exh. 222).

(74) Most districts spend the same percentage of their budgets for like categories (instruction, administration, etc.) of expenditures. (Tr. 3361, Plaintiffs' Exh. 222, 223).

(75) For example, expenditures for instruction (1974-75) were about 60% of the total expenditures in each decile of pupils ranked by total support. This consistency indicates that "rich" districts are not diverting money into non-instructional "extras" since districts of all support levels tend to spend the same percentage of their budgets for instruction. (Tr. 3361, Plaintiffs' Exh. 222, 223).

(76) If the 1974-75 total expenditures and their components are compared with groups of pupils ranked by equalized valuation, median family income or equalized millage rates, the linear relationship which existed between expenditures and total support is repeated for each of those measures of wealth:

(76.1) In general, as equalized valuation increases, total expenditure and its components increase.

(76.2) In general, as equalized millage increases, total expenditure and its components increase.

(76.3) In general, as median family income increases, total

expenditure and its components increase. (Tr. 3366-69, Plaintiffs' Exh. 225-232).

(77) Since there is a very strong positive relationship ($r = .60$) between a district's median family income and its tax rate, the higher a district's median family income, the higher its tax rate. (Tr. 3408, Plaintiffs' Exh. 202).

(78) Therefore, in 1974-75, local wealth dominated school district expenditures regardless of whether wealth is measured by local property valuation or by median family income (or by millage rates). (Tr. 3367, 3407).

(79) The disparities in educational expenditures and services which existed in 1974-75 were perpetuated in 1975-76, the first year of the operation of the present system, even though absolute dollar amounts were slightly higher in the second year. (Tr. 3370).

(80) In 1975-76, the expenditure disparities generally remained at a rate of 2:1, paralleling those of 1974-75. (Tr. 3371).

(81) These disparities remain consistent when groups of pupils are ranked by equalized valuation, by median family income, by equalized millage or by total support. (Tr. 3371, Plaintiffs' Exh. 233-236, 239, reproduced at end of section).

(82) In 1975-76, as in 1974-75, local wealth continued to dominate expenditures. (Tr. 3367).

(83) In 1975-76, districts with lower total support, lower property valuations, lower median family income or lower millage had fewer dollars to spend for instruction (including personnel, libraries, supplies, equipment, etc.), administration or any other purpose. (Tr. 3372, Plaintiffs' Exh. 233-243).

(84) Total state and local support for all 617 school districts in 1975-76 ranged from a high of \$3563 per pupil to a low of \$722.96 per pupil, as illustrated in Plaintiff's Exhibit 245-256 (reproduced at end of section) which lists the follow-

ing data for all the school districts in Ohio in 1975-76. (Tr. 3378).

(84.1) The first two columns state the name and county of each district.

(84.2) The third column lists the total state and local support per full-time equivalent pupil in 1975-1976.

(84.3) The fourth column lists the number of full-time equivalent pupils in each district, 1975-1976.

(84.4) The fifth column lists the sum of the local revenue plus basic state aid per FTE pupil (guaranteed yield) for 1975-1976.

(84.5) The sixth column lists categorical aid per FTE pupil, 1975-1976.

Table 1

Equalized Property Valuation
in Ohio School Districts, 1975-76

Range in Equalized Property
Valuation Per Pupil

Wealthiest District	\$ 282,897
90th Percentile	32,254
10th Percentile	11,735
Poorest	4,286
Median	19,492
Mean	23,195

Range (Highest to Lowest)	66.0:1
Range (90th to 10th)	2.8:1

Table 2

Yield of 20 Mills Per F.T.E. Pupil
in Ohio School Districts, 1975-'76

Wealthiest District		\$ 5,658
90th Percentile		876
10th Percentile		209
Poorest		86
Mean		464
Range (Highest to Lowest)	66.0:1	
Range (90th to 10th)	4.2:1	

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Table 5
The Distribution of Ohio School Districts, By Deciles
of Pupils, Ranked by Equalized Valuation Per F.T.E.
Pupil, 1975-76

Range in Equalized Valuation Per F.T.E.	Number of Pupils	Percent of Pupils	Cumulative Number of Pupils	Cumulative Percent of Pupils	Number of Districts
\$ 4,286 - \$ 13,198	222,924	10.11%	222,924	10.11%	105
13,212 - 16,298	220,008	9.98	442,932	20.10	100
16,326 - 19,064	219,064	9.94	661,996	30.03	89
19,065 - 20,922	220,690	10.01	882,686	40.05	71
20,975 - 23,381	220,246	9.99	1,102,932	50.04	63
23,387 - 24,581	266,936	12.11	1,369,868	62.15	25
24,663 - 25,098	180,965	8.21	1,550,833	70.36	17
25,203 - 27,837	239,085	10.85	1,789,918	81.21	41
27,875 - 31,865	221,369	10.04	2,011,287	91.25	40
31,996 - 282,897	192,799	8.75	2,204,086	100.00	66
Total:	2,204,086	100.00%	2,204,086	100.00%	617

Table 6

Local Yield and Basic State Aid
Per F.T.E. Pupil, 1975-76
For Deciles of Pupils Ranked By Equalized Valuation

<u>Range in Equalized Valuation Per F.T.E.</u>	<u>Local Yield Per F.T.E.</u>	<u>Basic State Aid Per F.T.E.</u>	<u>Local Yield Plus Basic State Aid Per F.T.E.</u>
\$ 4,286 - \$ 13,198	\$ 296.13	\$ 444.87	\$ 741.00
13,212 - 16,298	413.77	385.11	789.89
16,326 - 19,064	471.58	336.85	808.42
19,065 - 20,922	584.41	306.43	890.84
20,975 - 23,381	651.59	272.35	923.94
23,387 - 24,581	747.81	250.65	998.46
24,663 - 25,098	701.98	240.05	942.03
25,203 - 27,837	821.89	228.84	1,050.73
27,875 - 31,865	855.14	192.51	1,047.65
31,996 - 282,897	1,160.17	123.49	1,293.65

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Table 8

Local Support and Total State Aid
Per F.T.E. Pupil, 1975-76
For Deciles of Pupils Ranked By Equalized Valuation

<u>Range in Equalized Valuation Per F.T.E.</u>	<u>Total State Aid Per F.T.E.</u>	<u>Local Yield Per F.T.E.</u>	<u>Total State-Local Support Per F.T.E.</u>
\$ 4,286 - \$ 13,198	\$ 561.46	\$ 296.13	\$ 857.59
13,212 - 16,298	498.23	413.77	912.00
16,326 - 19,064	451.83	471.58	923.41
19,065 - 20,922	415.57	584.41	999.98
20,975 - 23,381	387.75	651.59	1,039.34
23,387 - 24,581	412.04	747.81	1,159.85
24,663 - 25,098	376.07	701.98	1,078.05
25,203 - 27,837	367.68	821.89	1,189.57
27,875 - 31,865	318.49	855.14	1,173.62
31,996 - 282,897	215.88	1,160.17	1,376.05

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Table 3

Ohio School Districts Ranked By Total State
and Local Support Per F.T.E. Pupil, 1975-76

Highest District	\$ 3,563
90th Percentile	1,460
10th Percentile	776
Poorest	723
Mean	1,070
Range (Highest to Lowest)	4.9:1
Range (90th to 10th)	1.9:1

Table 22

Ohio School Districts Ranked By Total State
and Local Support Per F.T.E. Pupil Under Full Funding,
1975-76

Highest District	\$ 3,489
90th Percentile	1,551
10th Percentile	1,048
Lowest	874
Mean	1,359
Range (Highest to Lowest)	4.0:1
Range (90th to 10th)	1.5:1

Table 11

Local Tax Effort, 1975-76
For Deciles of Pupils Ranked by Equalized Valuation

<u>Range in Equalized Valuation Per F.T.E. Pupil</u>	<u>Local Yield Per F.T.E. Pupil</u>	<u>Local Yield Per F.T.E. Pupil With 30 Mill Tax Rate</u>	<u>Local Tax Rate Required To Raise \$1,200 Per F.T.E. Pupil</u>
\$ 4,296 - \$ 13,198	\$ 296.13	\$ 342.05	\$ 105.25
13,212 - 16,298	413.77	440.97	81.64
16,326 - 19,064	471.58	524.47	68.64
19,065 - 20,922	584.41	596.35	60.37
20,975 - 23,381	651.59	666.80	53.99
23,387 - 24,581	747.81	725.43	49.63
24,663 - 25,098	701.98	747.42	48.17
25,203 - 27,837	821.89	794.96	45.29
27,875 - 31,865	855.14	905.38	39.76
31,996 - 282,897	1,160.17	1,285.01	28.02

Table 13

The Distribution of Ohio School Districts, By Deciles of Pupils Ranked by Median Family Income, 1975-'76

<u>Range in Median Family Income</u>	<u>Number of Pupils*</u>	<u>Percent of Pupils</u>	<u>Cumulative Number of Pupils*</u>	<u>Cumulative Percent of Pupils</u>	<u>Number of Districts</u>
\$ 4,574-\$ 8,517	220,753.0	10.02%	220,753.0	10.02%	116
8,529- 9,133	288,057.0	13.07	508,810.0	23.09	85
9,144- 9,351	153,630.0	6.97	662,440.0	30.06	38
9,361- 9,646	224,511.0	10.19	886,951.0	40.25	58
9,647- 10,053	253,468.0	11.50	1,140,419.0	51.75	56
10,062- 10,392	182,663.0	8.29	1,323,082.0	60.04	45
10,396- 11,004	220,925.5	10.02	1,544,007.5	70.06	69
11,012- 11,793	221,236.5	10.04	1,765,244.0	80.10	58
11,807- 12,757	228,558.0	10.37	1,993,802.0	90.47	44
12,766- 29,048	210,302.0	9.54	2,204,104.0	100.01	48
Totals: 2,204,104.0* 100.00% 2,204,104.0* 100.01%					617

*Cumulative totals vary when cumulation is calculated in different order.

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PLAINTIFFS' EXHIBIT No. 194

Table 14

Local Yield and Basic State Aid
Per F.T.E. Pupil For Deciles of Pupils
Ranked by Median Family Income
1975-76

<u>Median Family Income</u>	<u>Local Yield Per F.T.E.</u>	<u>Basic State Aid Per F.T.E.</u>	<u>Local Yield and Basic State Aid Per F.T.E.</u>
\$ 4,574 - \$ 8,517	\$ 410.93	\$322.39	\$ 733.32
8,529 - 9,133	663.51	278.35	941.86
9,144 - 9,351	657.05	241.93	898.98
9,361 - 9,646	625.29	275.13	900.42
9,647 - 10,053	686.11	249.36	935.47
10,062 - 10,392	684.11	271.69	955.80
10,396 - 11,004	556.35	322.61	878.96
11,012 - 11,793	656.17	311.21	967.38
11,807 - 12,757	787.44	269.13	1,056.58
12,766 - 29,048	945.64	247.49	1,193.13

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PLAINTIFFS' EXHIBIT No. 202

Table 19

Tax Effort, 1975-76, For Deciles of Pupils Ranked
By Median Family Income

<u>Median Family Income</u>	<u>Equalized Tax Rate (Per \$1000 Valuation)</u>	<u>Local Yield Per F.T.E.</u>
\$ 4,574 - \$ 8,517	\$ 22.72	\$ 410.93
8,529 - 9,133	28.98	663.51
9,144 - 9,351	26.05	657.05
9,361 - 9,646	27.53	625.29
9,647 - 10,053	28.61	686.11
10,062 - 10,392	* 28.99	684.11
10,396 - 11,004	28.46	556.35
11,012 - 11,793	30.00	656.17
11,807 - 12,757	31.06	787.44
12,766 - 29,048	34.40	945.64

Table 17

Local Support and State Aid
Per F.T.E. Pupil, 1975-76
For Deciles of Pupils Ranked By Median Family Income

<u>Median Family Income</u>	<u>Total State Aid Per F.T.E.</u>	<u>Local Yield Per F.T.E.</u>	<u>Total State-Local Support Per F.T.E.</u>
\$ 4,574 - \$ 8,517	\$ 457.74	\$ 410.93	\$ 868.67
8,529 - 9,133	435.70	663.51	1,099.21
9,144 - 9,351	395.84	657.05	1,052.90
9,361 - 9,646	408.70	625.29	1,033.99
9,647 - 10,053	392.94	686.11	1,079.05
10,062 - 10,392	391.89	684.11	1,076.00
10,396 - 11,004	436.40	556.35	992.74
11,012 - 11,793	407.14	656.17	1,063.31
11,807 - 12,757	361.12	787.44	1,148.56
12,766 - 29,048	331.08	945.64	1,276.72

Table 27

Local Support and State Aid Under Full Funding,
1975-76, For Deciles of Pupils Ranked By Median Family Income

<u>Median Family Income</u>	<u>Total State Aid Per F.T.E.</u>	<u>Local Yield Per F.T.E.</u>	<u>Total State-Local Support Per F.T.E.</u>
\$ 4,574 - \$ 8,517	\$ 699.11	\$ 410.93	\$ 1,110.74
8,529 - 9,133	725.55	663.51	1,389.06
9,144 - 9,351	628.15	657.05	1,285.20
9,361 - 9,646	708.14	625.29	1,333.43
9,647 - 10,053	675.26	686.11	1,361.37
10,062 - 10,392	676.76	684.11	1,360.87
10,396 - 11,004	772.41	556.35	1,328.76
11,012 - 11,793	730.87	656.17	1,387.04
11,807 - 12,757	658.05	787.44	1,445.49
12,766 - 29,048	617.75	945.64	1,563.39

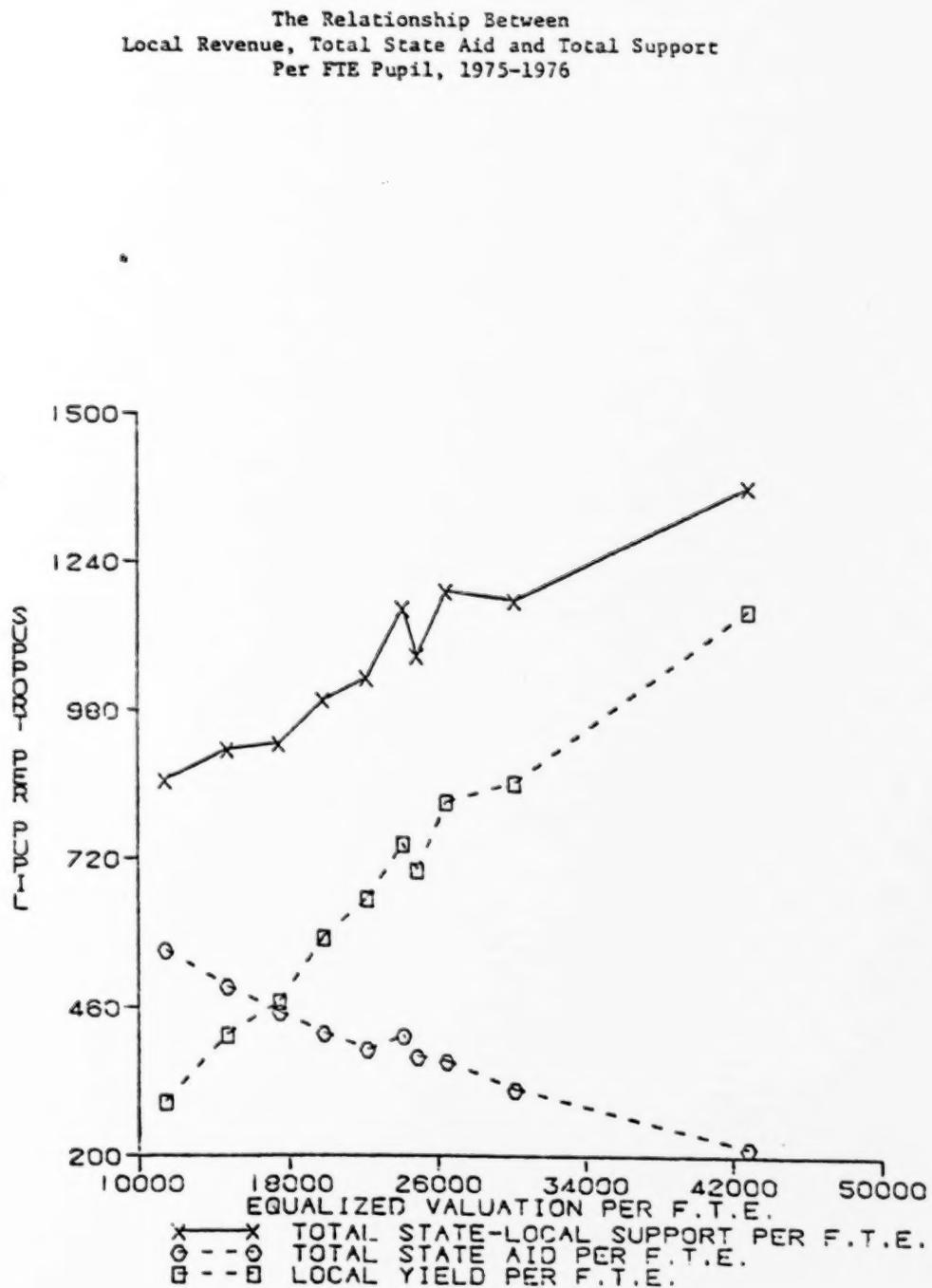


Table I-A
Staffing Patterns Per 1,000 Pupils For Deciles of Pupils
Ranked by Total Support, 1974-1975

	Total State & Local Support Per Pupil 1974-75	Professional Personnel Per 1,000 Pupils	Classrooms Teachers/ 1,000 Pupils	Administrative Staff Per 1,000 Pupils	Pupil Service Personnel Per 1,000 Pupils	Library Staff Per 1,000 Pupils	
\$ 574 - \$ 801	47.89	42.79	2.76	1.45	0.89		
802 - 843	49.24	43.81	2.92	1.70	0.81		
843 - 880	50.26	44.80	2.90	1.74	0.82		
880 - 925	50.17	44.70	2.93	1.68	0.85		
925 - 973	51.22	45.26	3.14	1.96	0.87		
974 - 1,024	50.99	44.49	3.26	2.26	0.97		
1,025 - 1,095	53.23	47.04	3.16	2.26	0.77		
1,097 - 1,152	52.70	46.17	3.44	2.36	0.73		
1,152 - 1,204	50.06	43.46	3.19	2.24	1.18		
1,208 - 4,001	59.88	51.77	3.95	2.56	1.60		

Table I-B

Pupil Service Personnel Per 1,000 Pupils For Deciles of Pupils
Ranked By Total Support, 1974-1975

Total State and Local Support Per Pupil 1974-75	Pupil Service Personnel Per 1,000 Pupils	Guidance Counselors Per 1,000 Pupils	Psychologists Per 1,000 Pupils	Special Therapists Per 1,000 Pupils	Social Workers Per 1,000 Pupils
\$ 574 - \$ 801	1.45	1.06	0.08	0.29	0.02
802 - 843	1.70	1.21	0.16	0.32	0.02
843 - 880	1.74	1.26	0.17	0.26	0.05
880 - 925	1.68	1.20	0.14	0.31	0.04
925 - 973	1.96	1.32	0.26	0.34	0.04
974 - 1,024	2.26	1.52	0.25	0.31	0.19
1,025 - 1,095	2.26	1.42	0.29	0.37	0.18
1,097 - 1,152	2.36	1.57	0.26	0.29	0.24
1,152 - 1,204	2.24	1.49	0.29	0.40	0.06
1,208 - 4,001	2.56	1.75	0.34	0.39	0.09

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PLAINTIFFS' EXHIBIT No. 220

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PLAINTIFFS' EXHIBIT No. 221

Table I-C

Teaching and Administrative Staff Per 1,000 Pupils For Deciles of Pupils Ranked By Total Support, 1974-1975

Total State and Local Support Per Pupil 1974-75	Classroom Teachers Per 1,000 Pupils	Average Teacher Salary	Average Administrative Staff Per 1,000 Pupils	Average Administrative Salary
\$ 574 - \$ 801	42.79	\$ 9,139	2.76	\$ 16,193
802 - 843	43.81	9,580	2.92	16,943
843 - 880	44.80	9,778	2.90	17,325
880 - 925	44.70	9,925	2.93	17,401
925 - 973	45.26	10,418	3.14	18,080
974 - 1,024	44.49	10,865	3.26	18,968
1,025 - 1,095	47.04	11,075	3.16	19,368
1,097 - 1,152	46.17	12,062	3.44	19,798
1,152 - 1,204	43.46	12,049	3.19	20,577
1,208 - 4,001	51.77	12,145	3.95	20,307

Table IV-A

The Relationship Between Expenditures Per Pupil
and Total Support Categories, 1975-1976,
For Deciles of Pupils Ranked By Total Support

Total Support 1975-1976	State & Local Support Per Pupil 1975-1976	Total Expen- ditures Per Pupil	Administrative Expen- diture Per Pupil	Instructional Expenditure Per Pupil	Coordinate Activities Expenditure Per Pupil	Library Expen- iture Per Pupil	Operation and Maintenance Expenditure Per Pupil
\$ 722 -	\$ 835	\$ 900.91	\$ 33.97	\$ 522.32	\$ 6.44	\$ 11.48	\$ 111.10
836 -	888	983.80	35.64	567.76	6.72	12.02	119.74
889 -	948	1,011.32	37.11	594.07	6.44	14.17	132.59
949 -	994	1,062.12	36.25	627.03	7.68	14.31	133.65
995 -	1,054	1,137.98	38.32	673.90	10.77	15.10	148.30
58 -	1,086	1,229.43	32.29	743.66	16.53	17.43	165.25
1,087 -	1,167	1,233.67	44.41	730.11	14.87	21.54	171.84
1,168 -	1,222	1,329.14	42.73	782.41	25.06	19.21	169.88
1,223 -	1,266	1,379.91	44.19	809.71	21.45	28.99	199.93
1,267 -	3,563	1,667.56	56.64	939.01	20.60	33.93	219.56

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PLAINTIFFS' EXHIBIT No. 241

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PLAINTIFFS' EXHIBIT No. 242

Table IV-B

The Relationship Between Instructional Expenditures
Per Pupil and Total Support Categories, 1975-1976
For Deciles of Pupils Ranked By Total Support

Total Support 1975-1976	State & Local Support Per Pupil 1975-1976	Instructional Expenditure/ Pupil	Regular Day School Expen- diture/Pupil	Educational Materials Expen- diture/Pupil	Educational Equipment Expen- diture Per Pupil
\$ 722 -	\$ 835	\$ 522.32	\$ 499.45	\$ 17.81	\$ 3.79
836 -	888	567.76	545.25	17.76	3.24
889 -	948	594.07	568.84	20.02	3.97
949 -	994	627.03	598.16	22.33	4.57
995 - 1,054	1,054	673.90	641.11	24.55	5.46
1,058 - 1,086	1,086	743.66	698.07	29.60	3.86
1,087 - 1,167	1,167	730.11	690.44	30.32	5.44
1,168 - 1,222	1,222	782.41	742.74	25.42	6.02
1,223 - 1,266	1,266	809.71	769.77	27.48	2.50
1,267 - 3,563	3,563	939.01	888.40	34.87	7.62

PLAINTIFFS' EXHIBIT No. 236

Table I-A

The Relationship Between Expenditures Per F.T.E. Pupil and Equalized Valuation, 1975-76 For Deciles of Pupils Ranked By Equalized Valuation

Equalized Valuation Per F.T.E. 1975-1976	Total Expenditure Per F.T.E.	Administrative Expenditure Per F.T.E.	Instructional Expenditure Per F.T.E.	Coordinate Activity Expenditure Per F.T.E.	Library Expenditure Per F.T.E.	Operation and Maintenance Expenditure Per F.T.E.
\$ 4,286.27 - \$ 13,159.98	\$ 963.85	\$ 37.48	\$ 566.28	\$ 7.23	\$ 12.00	\$ 118.46
13,198.18 - 16,255.13	1,011.12	38.80	585.25	7.90	15.07	129.02
16,298.47 - 19,064.37	1,028.64	35.81	595.38	7.32	12.25	131.18
19,065.41 - 20,905.95	1,088.34	37.30	656.73	6.75	15.67	134.53
20,922.72 - 23,381.23	1,154.75	38.53	676.72	10.63	17.70	147.32
23,387.39 - 24,508.66	1,312.64	44.02	768.98	21.00	30.15	191.30
24,581.69 - 25,051.10	1,224.57	30.77	746.79	17.95	17.09	167.14
25,098.53 - 27,825.03	1,254.35	40.09	738.90	20.55	15.58	172.21
27,837.29 - 31,865.60	1,365.95	45.29	795.66	19.28	24.17	174.71
31,996.19 - 282,897.31	1,528.68	54.21	854.76	16.97	28.82	207.68

PLAINTIFFS' EXHIBIT No. 236

Table II-A

The Relationship Between Expenditures Per F.T.E. Pupil and Median Family Income 1975-1976 For Deciles of Pupils Ranked By Median Family Income

Median Family Income	Total Expenditure Per F.T.E.	Administrative Expenditure Per F.T.E.	Instructional Expenditure Per F.T.E.	Coordinate Activity Expenditure Per F.T.E.	Library Expenditure Per F.T.E.	Operation and Maintenance Expenditure Per F.T.E.
* \$ 4,574 - 7,173	\$ 957.27	\$ 31.89	\$ 528.82	\$ 4.29	\$ 9.43	\$ 117.67
* 7,245 - 7,788	936.89	31.94	526.53	7.63	12.51	124.61
* 7,850 - 8,214	981.69	32.64	543.59	8.22	14.43	124.56
* 8,252 - 8,517	1,006.19	36.33	566.41	6.77	11.56	133.65
* 8,529 - 9,133	1,069.22	40.22	629.66	7.80	12.79	140.07
* 9,144 - 9,351	1,253.83	43.84	745.06	19.48	28.09	178.90
* 9,361 - 9,646	1,188.81	35.77	716.65	13.57	18.62	155.94
* 9,647 - 10,053	1,242.52	38.06	708.87	15.60	15.84	161.11
* 10,062 - 10,392	1,214.72	35.80	698.63	21.57	12.51	160.83
* 10,396 - 11,004	1,099.29	37.96	646.30	7.89	14.36	142.65
* 11,012 - 11,793	1,190.31	44.46	682.58	10.89	20.29	151.10
* 11,807 - 12,757	1,271.46	43.48	751.71	14.44	21.29	167.08
* 12,766 - 13,384	1,205.60	39.40	745.53	14.89	19.92	157.31
* 13,442 - 13,944	1,415.80	44.24	844.25	15.77	29.03	173.75
* 14,029 - 14,758	1,364.50	48.11	822.28	9.89	31.00	172.60
* 15,305 - 29,068	1,505.62	58.66	911.28	17.75	31.60	209.62

* Lowest decile broken out into four equal groups ** Tenth decile broken out into four equal groups

PLAINTIFFS' EXHIBIT No. 239

Table III-A
The Relationship Between Expenditures Per F.T.E., Pupil and Equalized
Millage, 1975-1976 For Deciles of Pupils Ranked By Equalized Millage Rates

Equalized Millage		Total Expenditure Per F.T.E.	Administrative Expenditure Per F.T.E.	Instructional Expenditure Per F.T.E.	Coordinate Activities Expenditure Per F.T.E.	Library Expenditure Per F.T.E.	Operation and Maintenance Expenditure Per F.T.E.
\$ 7.78 - 22.31		\$ 1,010.82	\$ 36.60	\$ 558.70	\$ 6.83	\$ 12.09	\$ 125.86
22.32 - 24.63		1,018.38	35.47	603.86	7.16	13.38	131.27
24.64 - 25.84		1,117.68	42.47	655.23	13.46	17.59	146.81
25.90 - 27.12		1,120.58	38.06	657.90	11.19	13.80	146.59
27.16 - 28.10		1,164.48	33.86	719.24	13.84	19.26	155.03
28.11 - 29.49		1,169.83	38.54	688.94	10.22	16.59	151.72
29.56 - 30.90		1,261.07	37.42	741.17	22.71	16.15	168.50
30.94 - 32.76		1,252.06	46.76	724.67	14.24	23.01	160.61
32.79 - 35.03		1,331.37	45.32	787.75	20.68	29.94	197.20
35.09 - 51.87		1,450.80	48.14	842.67	15.51	26.42	186.42

Plaintiffs' Exhibit No. 245
SORTED BY TOTAL STATE AND LOCAL SUPPORT (1976)

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CAID76/P
BRATENAHLS	CUYAHOGA	3563.00	132.50	3537.74	25.26
LORDSTOWN	TRUMBULL	3543.33	737.50	3459.69	83.64
CUYAHOGA HEIGHTS	CUYAHOGA	3208.47	905.50	3208.47	0.0
BEACHWOOD CITY	CUYAHOGA	2509.29	1793.00	2362.74	146.55
KELLEYS ISLAND	ERIE	2441.99	19.50	2427.89	14.09
NORTH BASS	OTTAWA	2418.69	9.00	1409.81	1008.89
MIDDLE BASS	OTTAWA	1943.63	10.00	1943.63	0.0
ST. BERNARD-ELM PLACE	HAMILTON	1927.89	1232.50	1927.89	0.0
SHAKER HEIGHTS CITY	CUYAHOGA	1905.57	6495.50	1856.24	49.32
PRINCETON CITY	HAMILTON	1879.01	8602.50	1769.63	109.37
BROOKLYN CITY	CUYAHOGA	1849.85	1955.00	1686.15	163.70
CLO FORT	SENECA	1823.70	579.00	1734.15	89.55
INDEPENDENCE	CUYAHOGA	1811.27	1106.50	1739.52	71.75
LOCKLAND CITY	HAMILTON	1702.84	922.00	1648.11	54.73
AVON LAKE CITY	LORAIN	1687.15	3133.50	1627.40	59.74
NCRTHWOOD	WOOD	1654.63	887.50	1606.47	48.16
MARIEMONT CITY	HAMILTON	1646.01	1877.50	1587.02	58.98
SOLON CITY	CUYAHOGA	1617.85	3023.00	1522.06	95.79
WCOORIDGE	SUMMIT	1614.20	1594.00	1529.13	85.06
GRANDVIEW HTS CITY	FRANKLIN	1606.40	1526.00	1562.54	43.86
NEW BOSTON	SCIOTO	1602.21	582.50	1561.03	41.18
OTTAWA HILLS	LUCAS	1565.08	933.50	1560.00	5.08
CRANGE CITY	CUYAHOGA	1559.74	2689.00	1446.42	113.33
INDIAN HILL	HAMILTON	1497.07	3161.00	1449.31	47.76
CHAGRIN FALLS	CUYAHOGA	1491.91	2186.00	1403.51	88.41
HAYFIELD CITY	CUYAHOGA	1488.27	5476.00	1298.62	189.65
KENT CITY	PORTRAGE	1487.94	4286.00	1230.83	249.11
CLEVELAND HTS-U HTS	CUYAHOGA	1485.64	10289.50	1382.61	103.03
ROSSFORD	WOOD	1484.67	1792.00	1442.33	42.35
SOUTH EUCLID-LYNCHUR	CUYAHOGA	1461.56	7196.50	1393.34	68.21
YELLOW SPRINGS	GREENE	1460.14	917.00	1370.51	89.62
EUCLID CITY	CUYAHOGA	1452.42	8591.00	1396.10	56.32
ROCKY RIVER CITY	CUYAHOGA	1438.17	3350.00	1402.62	35.75
DAYTON CITY	MONTGOMERY	1426.44	42605.50	1234.13	192.30
WESTLAKE CITY	CUYAHOGA	1402.25	3236.50	1320.08	82.18
RICHMOND HEIGHTS	CUYAHOGA	1397.81	1136.00	1344.22	53.60
WYOMING CITY	HAMILTON	1396.30	2083.00	1268.19	128.11
TWINSBURG CITY	SUMMIT	1386.47	2402.00	1292.19	94.28
WARRENSVILLE HTS	CUYAHOGA	1379.79	2914.00	1304.08	75.71
FAIRPORT HARBOR	LAKE	1375.02	567.00	1254.89	120.12
BEDFORD CITY	CUYAHOGA	1369.09	6864.00	1286.92	82.17
OAKWOOD CITY	MONTGOMERY	1350.19	1872.50	1335.27	14.92
WORTHINGTON CITY	FRANKLIN	1335.46	6342.00	1256.93	78.53
FAIRVIEW PARK CITY	CUYAHOGA	1330.76	2893.50	1293.12	37.65
FINNEYTOWN	HAMILTON	1324.86	2676.00	1227.23	97.62
NCRTH ROYALTON CITY	CUYAHOGA	1324.52	2870.00	1202.51	122.00
KETTERING CITY	MONTGOMERY	1323.31	12405.50	1253.07	70.24
KENSTON	GEauga	1322.22	2314.50	1143.32	178.90
LAKEWOOD CITY	CUYAHOGA	1290.85	9756.00	1206.06	84.79
BEXLEY CITY	FRANKLIN	1290.00	2347.00	1256.63	33.37
PAINESVILLE CITY	LAKE	1286.11	2971.50	1163.68	122.43
KICKLIFFE CITY	LAKE	1285.43	3521.00	1173.12	112.31
HUDSON	SUMMIT	1276.26	3397.50	1187.14	89.11
LOWELLVILLE	MAHONING	1273.46	498.00	1247.85	25.60

PLAINTIFFS' EXHIBIT No. 245

PLAINTIFFS' EXHIBIT No. 246

SORTED BY TOTAL STATE AND LOCAL SUPPORT (1976)

Plaintiffs' Exhibit No. 246

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CAID76/P
THREE RIVERS	HAMILTON	1270.48	2245.50	1213.85	56.63
SHAWNEE	ALLEN	1269.17	3127.00	1172.80	96.37
KIRTLAND	LAKE	1268.46	1401.50	1205.99	62.47
WORSTER CITY	WAYNE	1267.27	4316.50	1134.53	132.74
YOUNGSTOWN CITY	MAHONING	1265.61	20320.50	1034.88	230.72
MIDDLETON CITY	BUTLER	1265.30	11739.00	1141.94	123.36
GEauga CITY	CUYAHOGA	1263.03	14847.00	1198.81	64.23
BRECKSVILLE CITY	CUYAHOGA	1259.42	4103.50	1178.08	81.34
WOLF CREEK	WASHINGTON	1259.42	740.50	1259.42	0.0
SYCAMORE CITY	HAMILTON	1255.96	4645.00	1144.22	111.74
CLEVELAND CITY	CUYAHOGA	1254.75	121256.50	1067.96	186.78
BOARDMAN	MAHONING	1251.09	6328.00	1179.40	71.69
AURORA CITY	PORTAGE	1240.84	2037.00	1112.31	128.53
WILLIOUGHBY-EASTLAKE	LAKE	1236.60	14037.50	1126.93	109.67
PERKINS	ERIE	1234.98	2669.50	1131.48	103.50
FORT FRYE	WASHINGTON	1232.71	1544.50	1110.66	122.05
PETTISVILLE	FULTON	1230.22	569.50	1090.22	140.01
MENTOR	LAKE	1226.00	11590.00	1132.78	93.21
ONTARIO	RICHLAND	1225.75	2243.50	1118.12	107.63
NEW RICHMOND	CLERMONT	1223.80	2570.00	1137.90	85.90
PAKMA CITY	CUYAHOGA	1221.78	22233.50	1106.15	115.63
GARFIELD HTS CITY	CUYAHOGA	1220.76	4639.50	1149.60	71.16
OVERLIN CITY	LORAIN	1220.17	1894.00	1095.24	124.93
OREGON CITY	LUCAS	1219.06	4832.50	1082.07	136.99
RIVER VIEW	COSHOCOTON	1218.91	3034.50	1056.71	162.20
UPPER ARLINGTON CITY	FRANKLIN	1217.13	7449.50	1182.10	35.03
MANSFIELD CITY	RICHLAND	1213.02	9372.00	1027.70	185.32
CANTON CITY	STARK	1209.94	16711.50	1012.89	197.05
MOGADORE	SUMMIT	1206.95	1262.00	1151.46	55.49
WASHINGTON	LUCAS	1204.21	10645.00	1109.21	95.00
BARBERTON CITY	SUMMIT	1203.87	6292.00	1102.32	101.56
CAMPBELL CITY	MAHONING	1199.27	2002.00	1087.08	112.19
WEST CARROLLTON CITY	MONTGOMERY	1190.55	5367.00	1098.60	91.94
WEST GEAUGA	GEAUGA	1190.01	3983.50	1115.97	74.05
HURON CITY	ERIE	1188.47	2096.50	1103.72	84.74
BATH	ALLEN	1185.97	2565.50	1062.17	123.80
PERRYSBURG	WOOD	1181.67	2778.00	1127.46	54.21
GARAWAY	TUSCARAWAS	1181.66	1228.00	998.18	183.47
SANDUSKY CITY	ERIE	1181.03	6014.50	1058.96	122.07
AKRON CITY	SUMMIT	1180.46	46525.50	1052.86	127.61
REVERE	SUMMIT	1179.00	3242.00	1129.08	50.92
CUYAHOGA FALLS CITY	SUMMIT	1178.90	9691.00	1102.89	76.01
NORTH CLMSTED CITY	CUYAHOGA	1177.55	7739.00	1110.53	67.01
MADEIRA CITY	HAMILTON	1176.04	1794.00	1095.42	80.62
CALTON	WAYNE	1170.80	1084.00	1062.90	107.89
EDISON	JEFFERSON	1170.58	4197.50	1075.15	95.43
MAUMEE CITY	LUCAS	1169.47	3834.00	1014.35	155.12
HAMILTON CITY	PUTLER	1168.68	12149.00	1011.75	156.93
CINCINNATI CITY	HAMILTON	1163.23	64907.00	960.44	202.79
READING CITY	HAMILTON	1162.22	2612.50	1077.31	84.91
MAPLE HEIGHTS CITY	CUYAHOGA	1158.72	5219.00	1059.24	99.49
ATHENS CITY	ATHENS	1158.02	3535.00	1032.50	125.52
STRONGSVILLE CITY	CUYAHOGA	1155.72	4889.50	1050.25	105.47
CRESTLINE	CRAWFORD	1151.20	1333.50	1020.23	130.97

PLAINTIFFS' EXHIBIT No. 247

Plaintiffs' Exhibit No. 247

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CAID76/P
EAST CLEVELAND CITY	CUYAHOGA	1147.28	8050.50	977.58	169.70
CHARDON	GEauga	1145.35	2980.50	1067.10	78.25
LOUDONVILLE-PERRYSVL	ASHLAND	1143.33	1652.50	1027.81	115.51
BAY VILLAGE CITY	CUYAHOGA	1141.57	4011.50	1088.70	52.86
MICROONIA HILLS	SUMMIT	1140.28	5271.50	1089.10	51.17
GURHAN-FAYETTE	FULTON	1137.96	605.00	1029.56	108.40
COVENTRYP	SUMMIT	1134.04	2679.00	1035.49	98.55
CANTON	STARK	1133.60	3686.00	1002.99	130.61
TURONTC CITY	JEFFERSON	1132.58	1590.00	1039.34	93.24
FINDLAY CITY	HANCOCK	1131.70	8110.00	999.37	132.33
BETTSVILLE	SENECA	1128.37	334.50	1105.86	22.51
WARREN CITY	TRUMBULL	1127.31	11815.50	961.71	165.61
VERMILION	ERIE	1124.80	3626.00	1075.33	49.47
DEER PARK CITY	HAMILTON	1121.65	2461.50	1036.63	85.02
JEFFERSON	MONTGOMERY	1120.83	2054.50	979.67	141.16
NORWOOD CITY	HAMILTON	1119.60	4949.50	1096.59	23.01
BUCKEYE	ASHTABULA	1118.02	3350.50	1077.78	40.24
VANDALIA-BUTLER CITY	MONTGOMERY	1113.72	4969.50	1022.21	91.52
SPRINGFIELD	SUMMIT	1113.66	4830.50	1013.96	99.70
PAINESVILLE TWP	LAKE	1112.74	4775.50	1056.17	56.57
LEDGEAMENT	GEauga	1112.68	854.50	1000.96	111.72
MEDINA CITY	MEDINA	1111.38	4496.00	1019.78	91.60
MCDONALD	TRUMBULL	1109.73	1072.50	1051.84	57.94
WOODMORE	SANDUSKY	1108.57	1400.00	1014.49	94.08
OLMSTED FALLS CITY	CUYAHOGA	1106.51	2886.00	1010.42	96.09
LAKEVIEW	TRUMBULL	1106.19	2116.50	942.65	163.54
STEUBENVILLE CITY	JEFFERSON	1097.70	3573.00	937.71	159.79
ALLIANCE CITY	STARK	1097.23	5371.00	923.48	173.75
AYRSVILLE	DEFIANCE	1096.06	1137.00	979.34	116.71
MASILLON CITY	STARK	1095.54	6201.50	944.16	151.38
NEWBURY	GEauga	1095.17	1079.50	984.76	110.41
SIDNEY CITY	SHELBY	1093.30	4420.50	1017.47	75.83
ARLINGTON	HANCOCK	1092.88	616.00	955.47	137.41
JEFFERSON	FRANKLIN	1092.68	5443.50	1019.68	73.00
BRYAN CITY	WILLIAMS	1092.17	2422.00	1015.66	76.51
EATON CITY	PREBLE	1092.09	2169.00	970.48	121.62
ARCADIA	HANCOCK	1091.58	647.50	900.60	190.98
CLENTANGY	DELWARE	1091.14	1659.50	967.68	123.47
LANCASTER CITY	FAIRFIELD	1090.90	7598.00	959.55	131.35
MONTPELIER	WILLIAMS	1090.38	1352.00	985.64	104.74
BOWLING GREEN CITY	WOOD	1090.14	3650.00	962.81	127.33
GALION CITY	CRAWFORD	1089.93	3774.00	974.74	115.19
TALWANCA	BUTLER	1087.67	3566.50	960.03	127.64
SYLVANIA CITY	LUCAS	1087.00	7613.00	948.90	138.10
CHILLICOTHE CITY	ROSS	1084.63	5335.50	984.72	99.91
SHADYSIDE CITY	BELMONT	1083.64	1233.50	1019.65	63.39
KITTMAN	WAYNE	1083.21	1646.00	969.40	113.81
ARCHBOLD AREA	FULTON	1082.59	1526.50	1017.08	65.51
COSHOCOTI CITY	COSHOCOTN	1081.98	2859.00	974.58	107.40
STRUTHERS CITY	FRANKLIN	1080.80	2750.00	964.46	116.34
COLUMBUS CITY	ELYRIA CITY	1080.09	92145.00	933.19	146.90
HARRISON HILLS CITY	LORAIN	1078.25	12901.00	1016.52	61.73
NEW KNOXVILLE	HARRISON	1077.29	3521.00	976.21	101.08
	AUGLAIZE	1077.24	430.00	973.67	103.62

PLAINTIFFS' EXHIBIT No. 248

PLAINTIFFS' EXHIBIT No. 249

Plaintiffs' Exhibit No. 248
SORTED BY TOTAL STATE AND LOCAL SUPPORT (1976)

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CAID76/P
HUHLAND	TRUMBULL	1073.20	5441.50	1004.21	68.99
WASHINGTON	FRANKLIN	1072.97	1792.50	970.21	102.77
GIRARD CITY	TRUMBULL	1070.91	2380.50	953.72	117.19
BERKSHIRE	GEauga	1067.86	1580.50	969.90	97.96
SHELBY CITY	KICHLAND	1067.82	3054.00	983.93	83.90
MIAMISBURG CITY	MONTGOMERY	1067.57	4727.50	967.79	99.78
CENTERVILLE CITY	MONTGOMERY	1066.72	7618.00	961.97	104.75
WEATHERSFIELD TWP	TRUMBULL	1063.18	1060.50	991.70	71.49
RAVENNA CITY	PORTAGE	1062.26	4347.50	948.76	113.50
TOLEDO CITY	LUCAS	1061.82	54474.00	858.16	203.66
XENIA CITY	GREENE	1059.38	7224.00	952.82	106.56
DELAWARE CITY	DELAWARE	1058.44	3700.00	962.31	96.14
DAK HILLS	HAMILTON	1056.46	8729.00	958.05	98.41
VAN BUREN	HANCOCK	1056.15	927.00	991.37	64.78
AVON	LORAIN	1055.27	1490.00	930.93	124.34
INDIAN VALLEY	TUSCARAWAS	1055.15	2179.00	890.72	164.43
POLAND	MAHONING	1054.75	2842.50	1001.40	53.36
ASHLAND CITY	ASHLAND	1054.60	4704.00	950.92	103.68
GREENMILLS-FOR PARK	HAMILTON	1052.79	7864.00	970.65	82.15
DANBURY	OTTAWA	1049.37	885.00	993.53	55.84
BLUFFTON	ALLEN	1047.68	1094.00	974.19	73.50
CEDAR CLIFF	GREENE	1046.53	703.00	938.16	108.38
FOSTORIA CITY	SENECA	1046.46	3159.00	936.38	110.08
WILLIAMSBURG	CLERMONT	1045.77	1209.50	933.54	112.23
COPLEY-FAIRLAWN CITY	SUMMIT	1045.48	3559.00	926.37	119.11
NORTHRIDGE	MONTGOMERY	1045.04	2962.50	957.93	87.11
LIBERTY	TRUMBULL	1043.44	2859.50	941.55	101.89
ANTWERP	PAULDING	1042.00	1055.00	883.00	158.99
SPRINGFIELD CITY	CLARK	1040.79	14601.50	907.92	132.87
VAN WERT CITY	VAN WERT	1040.32	2446.00	927.54	112.78
CRESTVIEW	VAN WERT	1039.57	1050.50	909.59	129.99
PERRY	LAKE	1038.79	1735.00	948.00	90.79
MARLINGTON	STARK	1038.30	3424.00	851.79	186.51
DUVER CITY	TUSCARAWAS	1038.06	3144.50	939.41	98.65
JACKSON CENTER	SHELBY	1038.03	522.50	985.70	52.32
ORRVILLE CITY	WAYNE	1037.54	2359.00	916.46	121.08
HILLSDALE	ASHLAND	1035.94	1228.00	906.45	129.50
MADISON	RICHLAND	1035.54	5487.00	897.18	138.35
EVERGREEN	FULTON	1035.03	1701.00	902.10	132.94
SWITZERLAND OF OHIO	MORRCE	1034.90	4751.50	945.38	89.53
BLACK RIVER	MEDINA	1034.67	1384.50	882.09	152.59
KENTON CITY	HARDIN	1033.91	2667.50	906.76	127.15
TRCY CITY	MIAMI	1033.66	5005.00	944.08	89.59
VANLUE	HANCOCK	1032.97	394.50	861.31	171.65
EAST KNOX	KNOX	1032.82	786.50	898.87	133.94
DEERFIELD-UNION	WARREN	1032.68	2175.50	904.57	128.11
WHITEHALL CITY	FRANKLIN	1032.61	4146.00	959.95	72.66
LORAIN CITY	LORAIN	1032.56	15267.50	921.56	111.00
JAMES A GARFIELD	PORTAGE	1032.27	1620.50	926.56	105.72
NEWARK CITY	LICKING	1032.21	8647.50	898.82	133.39
GRANVILLE	LICKING	1030.57	1647.00	953.14	77.43
BELLEVUE CITY	HURON	1029.37	2954.00	933.27	96.10
PUT-IN-BAY	OTTAWA	1029.12	87.00	1029.12	0.0
LIMA CITY	ALLEN	1026.90	8906.50	852.29	174.60

Plaintiffs' Exhibit No. 249
SORTED BY TOTAL STATE AND LOCAL SUPPORT (1976)

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CAID76/P
IRVINGTON	LAWRENCE	1025.17	2674.00	874.69	150.47
WAYNE TRACE	PAULDING	1024.08	1508.00	878.39	145.69
NORTON CITY	SUMMIT	1022.27	3790.50	933.21	89.06
ROOTSTOWN	PORTAGE	1020.82	1758.50	880.00	140.82
PIKE-DELTA-YORK	FULTON	1020.41	1850.00	903.94	116.48
FIELD	PORTAGE	1019.64	3354.00	907.88	111.76
LUCAS	KICHLAND	1018.57	857.50	755.28	63.29
NORTH CANTON CITY	STARK	1017.41	4516.00	889.91	127.50
WILLARD CITY	HURON	1016.46	2405.50	933.61	82.85
WADEWORTH CITY	MEDINA	1014.06	4446.50	854.30	159.76
MARGARETTA	ERIE	1012.57	2124.50	904.95	107.63
NEW RIEGEL	SENECA	1009.87	580.00	894.27	115.60
LINCOLNVIEW	VAN WERT	1009.73	927.50	828.58	181.15
NORTH CULL HILL CITY	HAMILTON	1009.62	1942.00	928.81	80.81
MAD RIVER	MONTGOMERY	1007.78	6510.50	823.13	184.65
PLEASANT	MARION	1006.75	1602.50	874.26	132.49
LABRAE	TRUMBULL	1005.56	2503.50	905.80	99.76
MARIETTA CITY	WASHINGTON	1003.70	4921.00	872.02	131.68
MILFORD	CLERMONT	1003.06	4814.50	894.71	108.35
CANVILLE	KNOX	1002.85	772.00	870.28	132.57
NEW PHILA	TUSCARAWAS	1002.28	3996.00	873.92	128.36
WEST HOLMES	HOLMES	1002.13	2706.50	843.67	158.45
BATAVIA	CLERMONT	1001.94	933.00	905.62	96.32
RIDGEDALE	MARION	1000.69	1238.00	826.40	174.29
SUGARCREEK	GREENE	998.63	2055.00	876.34	122.29
MADISON CONSOLIDATED	GUERNSEY	997.85	427.50	795.47	202.38
COLONEL CRAWFORD	CRAWFORD	997.46	1529.50	862.84	134.62
NORTHEASTERN	DEFIANCE	996.01	1223.50	844.69	151.32
TROTWOOD MADISH CITY	MONTGOMERY	995.37	5405.00	844.15	151.22
FAIRBURN CITY	GREENE	994.77	8587.50	921.27	73.50
AUSTINTOWN	MAHONING	994.46	7960.00	935.58	58.87
INDIAN CREEK	JEFFERSON	993.83	4872.50	914.83	79.00
WEST LIBERTY-SALEM	CHAMPAIGN	993.15	1159.00	818.96	174.19
SOUTH RANGE	MAHONING	991.45	1550.00	914.93	76.53
SHANTON	FULTON	990.14	2085.00	905.06	85.08
ELGIN	MARION	989.33	1867.50	850.86	138.47
CHIO CITY-LIBERTY	VAN WERT	985.50	414.00	931.00	54.50
BRUCKFIELD	TRUMBULL	985.06	2124.50	894.63	90.44
ZANESVILLE CITY	MUSKINGUM	985.00	6565.50	847.45	137.54
SOUTHEAST	WAYNE	984.95	1927.00	853.69	131.26
SOUTH-WESTERN CITY	FRANKLIN	984.80	17086.50	813.96	170.84
FREMONT CITY	SANDUSKY	984.75	6552.50	919.34	65.41
BUCKEYE	JEFFERSON	984.24	4337.50	859.05	125.19
DELPHOS CITY	ALLEN	983.34	1514.50	844.70	138.63
CONOTTON VAL UNION	HARRISON	982.30	650.00	910.88	71.43
SCIOTO-DARBY CITY	FRANKLIN	982.01	4541.50	875.96	106.05
PLAIN	STARK	981.59	2036.00	849.59	132.00
LOVELAND CITY	HAMILTON	980.56	3253.00	907.64	72.91
FOREST HILLS	HAMILTON	980.08	8541.50	914.40	65.68
TALLMADGE CITY	SUMMIT	979.97	3931.50	850.29	128.67
CAMPFIELD	MAHONING	976.03	2804.00	900.11	75.92
STREETSBORO CITY	PORTAGE	974.69	2523.50	826.22	148.46
LIBERTY CENTER	HENRY	973.33	1209.50	858.29	115.04
MIAMI EAST	MIAMI	972.14	1653.00	855.96	116.17

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PLAINTIFFS' EXHIBIT No. 250

SORTED BY TOTAL STATE AND LOCAL SUPPORT (1976)
Plaintiffs' Exhibit No. 250

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CAID76/P
ANTHONY WAYNE	LUCAS	971.64	3458.00	877.30	94.35
SHEFFIELD-SH LK CITY	LORAIN	971.48	2904.00	869.60	101.88
FORT CLINTON CITY	OTTAWA	971.46	3197.00	868.30	103.16
CARDINAL	GEauga	970.54	1698.50	850.35	120.19
ASHTABULA AREA CITY	ASHTABULA	968.96	6578.00	892.46	76.49
TUSCARAWAS VALLEY	TUSCARAWAS	968.04	1822.00	803.82	164.22
VERSAILLES	DARKE	967.76	1640.50	816.40	151.36
CLEAR FORK VALLEY	RICHLAND	967.50	1732.50	852.68	114.81
BEAVERCREEK	GREENE	966.83	8143.50	893.88	72.95
CRESTVIEW	COLUMBIANA	966.30	1063.50	871.90	94.40
BENJAMIN LOGAN	LOGAN	966.29	2035.00	791.01	175.27
TRINITY	WAYNE	966.17	2062.00	831.37	134.81
STOW CITY	SUMMIT	965.47	6432.00	863.66	101.81
CORY-RANSOM	HANCOCK	964.57	893.00	753.36	211.21
SPRINGFIELD	CLARK	963.52	2884.00	881.72	81.80
SOUTHEASTERN	CLARK	962.99	945.00	817.45	145.55
MOUNT VERNON CITY	KNOX	962.11	4739.50	892.68	69.43
SOUTH CENTRAL	HURON	960.91	1124.00	832.02	128.89
SOUTHWEST	HAMILTON	960.52	3042.00	896.40	64.12
BERLIN-MILAN	ERIE	960.11	1939.50	875.12	85.00
FRANKLIN-MONROE	DARKE	959.65	981.00	775.70	183.95
JACKSON MILTON	MAHONING	959.61	1569.00	821.58	138.03
GREEN	SUMMIT	959.35	3688.00	874.42	84.93
STRASBURG-FRANKLIN	TUSCARAWAS	959.29	806.50	813.33	145.96
WYNFORD	CRAWFORD	958.94	1514.00	784.92	174.03
SALEM CITY	COLUMBIANA	958.00	3770.50	842.11	115.89
NORTH CENTRAL	WILLIAMS	957.64	875.00	863.29	94.35
DEFIANCE CITY	DEFIANCE	957.16	3729.50	850.50	106.66
ELMWOOD	WOOD	956.75	1740.00	802.69	154.06
BUCKEYE	MEDINA	955.11	2100.50	857.59	97.52
MOUNT HEALTHY CITY	HAMILTON	955.11	7211.50	884.36	70.75
EAST FRANKLIN	SUMMIT	954.80	2553.00	863.42	91.38
NORTHRIDGE	LICKING	954.43	1460.00	767.85	186.59
WEST CLERMONT	CLERMONT	953.36	7878.00	802.15	151.21
PILLCREEK-WEST UNITY	WILLIAMS	953.24	926.00	859.22	94.02
GREEN	SCIOTO	952.70	916.00	771.16	181.63
ZANE TRACE	ROSS	952.54	1423.50	823.96	128.57
LOGAN ELM	PICKAWAY	951.80	2427.00	823.62	128.18
STRYKER	WILLIAMS	951.34	716.00	889.66	61.68
LONDON CITY	MADISON	951.11	2951.00	846.07	105.05
PERRY	ALLEN	950.76	1009.50	760.49	190.27
FAIRFIELD	BUTLER	950.71	6961.50	857.91	92.80
GRAND VALLEY	ASHTABULA	949.67	1590.00	806.71	148.96
PYMATUNING VALLEY	ASHTABULA	949.07	1678.50	796.82	152.26
CARLISLE	WARREN	947.69	2568.00	846.58	101.11
CHIU VALLEY	ADAMS	947.50	5845.00	799.82	147.69
PANDORA-GILBOA	PUTNAM	945.31	814.00	741.21	204.10
WAYNESFIELD-GOSHEN	AUGLAIZE	944.95	685.00	831.38	113.57
GLYDE	SANDUSKY	944.47	2801.00	863.67	80.79
C R COBLENTZ	PREBLE	944.43	1772.50	816.48	127.94
TRI-VILLAGE	DARKE	944.06	1145.50	765.61	178.45
PLAIN	FRANKLIN	943.94	1187.00	851.82	92.12
LEXINGTON	RICHLAND	943.61	3243.50	860.75	74.86
COLUMPIA	LORAIN	943.28	1676.00	853.32	89.96

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PLAINTIFFS' EXHIBIT No. 251

SORTED BY TOTAL STATE AND LOCAL SUPPORT (1976)
Plaintiffs' Exhibit No. 251

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CAID76/P
SEBRING	MAHONING	942.50	1164.50	894.13	48.37
NEWCOMERSTOWN	TUSCARAWAS	941.65	1494.00	792.36	149.29
ADENA	ROSS	941.29	1203.00	797.14	144.16
HEATH CITY	LICKING	938.85	1828.50	823.32	115.53
CRESTWOOD	PORTAGE	938.74	3117.50	821.87	116.88
MADISON	LAKE	938.67	4562.00	875.33	63.34
LAKE LOCAL	WOOD	937.77	2355.50	842.32	95.45
UREANA CITY	CHAMPAIGN	937.75	2824.50	807.34	130.41
BETHEL	MIAMI	936.93	1214.50	858.86	78.06
NEWTON TWP	MIAMI	936.59	688.50	807.65	128.94
HIGHLAND	MEDINA	936.41	2624.50	853.70	82.71
HARDIN NORTHERN	HARDIN	935.68	725.50	747.74	187.94
CO'NEAUT AREA CITY	ASHTABULA	935.63	3499.50	859.74	75.89
BUCKEYE CENTRAL	CRAWFORD	935.07	929.50	791.27	143.80
UPPER SICO TO VALLEY	HARDIN	934.85	1100.00	799.89	134.97
TIFFIN CITY	SENECA	934.68	4727.50	838.68	96.00
GENEVA AREA CITY	ASHTABULA	934.55	3758.50	839.95	94.60
MAPLETON	ASHLAND	932.81	1254.00	774.90	157.90
GREENE	WAYNE	931.65	1368.00	832.52	99.13
CLEARVIEW	LORAIN	931.12	1642.00	823.95	107.18
GIBSONBURG	SANDUSKY	927.79	1366.50	822.52	105.27
WEST BRANCH	MAHONING	926.55	3072.00	820.88	105.67
SOUTHINGTON	TRUMBULL	926.44	906.00	877.97	48.47
MASON	WARREN	926.31	2171.50	845.17	81.14
BRUNSWICK CITY	MEDINA	926.03	7223.00	852.67	73.36
SOUTH AMHERST LOCAL	LORAIN	923.34	834.50	864.38	58.96
MINSTER	AUGLAIZE	923.18	969.00	845.22	77.96
NORTHWEST	HAMILTON	923.15	14118.00	811.12	112.03
CRESTVIEW	RICHLAND	922.77	1509.00	779.97	142.80
MONROEVILLE	HURON	922.67	882.00	799.44	123.23
PATRICK HENRY	HENRY	922.59	1525.50	786.57	136.02
CLINTON MASSIE	CLINTON	922.36	1314.00	746.32	176.04
PIQUA CITY	MIAMI	921.19	4943.50	838.22	82.97
FIRELANDS	LORAIN	920.64	1890.00	810.40	110.24
BETHEL-TATE	CLERMONT	920.19	1899.00	781.04	139.15
NILES CITY	TRUMBULL	919.28	4154.00	846.35	72.92
MARTINS FERRY CITY	BELMONT	918.27	2538.50	797.51	120.76
AMHERST	LORAIN	918.22	3976.50	858.80	59.42
FRANKLIN CITY	WARREN	918.08	4475.00	839.21	78.87
NORTHWEST	STARK	917.17	2213.50	809.28	107.89
BUCYRUS CITY	CRAWFORD	916.93	2543.00	775.19	141.74
WAUSEON	FULTON	916.34	1744.50	824.10	92.23
COLUMBUS GROVE	PUTNAM	916.23	1059.00	708.99	207.24
WALNUT TWP	FAIRFIELD	915.96	782.50	779.89	136.08
HENTON-CARROLL-SALEM	OTTAWA	915.72	2160.50	810.13	105.59
NORTH CENTRAL	WAYNE	913.29	1675.00	792.86	120.43
SPRINGFIELD	MAHONING	913.09	1731.50	838.28	74.81
LAKEWOOD	LICKING	912.92	2709.00	809.15	103.77
OTSEGO	WOOD	912.53	1886.00	806.03	106.50
EAST PALESTINE CITY	COLUMBIANA	912.01	2000.50	805.00	107.01
WILMINGTON CITY	CLINTON	910.82	3587.00	793.18	117.64
RUSSIA	SHELBY	909.64	491.50	881.63	28.01
PLYMOUTH	RICHLAND	908.62	1433.50	757.39	151.24
FAIRBANKS	UNION	908.02	1094.00	759.91	148.10

Plaintiffs' Exhibit No. 252
SORTED BY TOTAL STATE AND LOCAL SUPPORT (1976)

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYL076/P	CAID76/P
RIVERDALE	HARDIN	907.89	1442.00	738.81	169.08
WATERLOO	PORTAGE	906.60	1864.50	751.25	155.35
WESTERVILLE CITY	FRANKLIN	906.46	11193.50	817.00	89.46
MENCON-UNION	HERCER	905.84	424.00	759.14	146.70
TUSLAH	STARK	904.06	2004.00	784.97	119.09
EAST MUSKINGUM	MUSKINGUM	903.49	2158.00	780.79	122.70
NORWALK CITY	HURON	902.51	3022.00	811.76	90.75
NEW BREMEN	AUGLAIZE	902.06	814.50	799.98	102.09
WAYNE	WARREN	901.12	1416.00	776.12	125.00
OSNAUBURG	STARK	900.32	1449.50	765.34	134.98
CANAL WICHESTER	FRANKLIN	900.10	1097.50	814.18	85.92
MARION CITY	MARION	899.75	8046.00	792.70	107.05
WINDHAM	PORTAGE	898.50	1562.00	789.54	108.96
JENNINGS	PUTNAM	897.79	508.00	666.59	231.20
MORGAN	MORGAN	897.30	3083.00	673.98	223.33
COLUMBIANA	COLUMBIANA	896.53	1326.50	796.96	99.56
SPRINGFIELD	LUCAS	895.96	3347.50	806.69	89.26
NEWLEBANON	MONTGOMERY	895.41	1905.50	790.24	105.17
LAKOTA	BUTLER	895.36	5757.00	800.12	95.24
EDON-NORTHWEST	WILLIAMS	895.06	730.00	735.72	159.33
SENECA EAST	SENECA	894.69	1385.00	783.57	111.12
KEYSTONE	LORAIN	893.30	1578.00	800.29	93.02
LISBON	COLUMBIANA	892.13	1405.50	795.24	96.89
NEW LONDON	HURON	892.10	1260.50	768.04	124.05
MIDVIEW	LORAIN	891.30	3953.50	791.55	99.74
OUNT GILEAD	MORROW	890.47	1598.00	781.35	109.08
SOUTHWEST LICKING	ICKING	889.91	2667.50	773.69	116.22
ICKING HTS	ICKING	889.49	1341.50	721.13	168.36
NORTH BALTIMORE	WOOD	889.18	950.50	796.96	92.22
FELICITY-FRANKLIN	CLERMONT	889.04	1057.00	740.95	148.09
PERRY	STARK	888.61	6212.00	785.41	103.20
PARKWAY	HERCER	887.55	1150.50	773.46	114.09
PAULDING	PAULDING	887.26	2692.00	795.70	91.56
FAIRLESS	STARK	886.75	2612.50	719.71	167.04
CHIPPEWA	WAYNE	886.73	1721.00	767.24	119.50
INDIAN LAKE	LOGAN	886.27	1945.50	712.37	173.91
VALLEY VIEW	MONTGOMERY	886.23	2398.50	751.45	134.78
LAKE	STARK	885.77	2912.00	787.13	98.64
JONATHAN ALDER	MADISON	884.23	1605.00	773.63	110.60
ADA	HARCIN	884.15	1068.00	737.95	146.20
CAREY	WYANDOT	883.91	1179.00	764.94	118.97
RIVER VALLEY	MARION	883.09	2547.50	782.30	100.78
LEBANON CITY	WARREN	881.73	3435.00	781.47	100.26
MADISON PLAINS	MADISON	880.53	2005.00	763.22	117.31
ZANE TRACE	GUERNSEY	880.44	878.50	741.34	139.10
MUHAWK	WYANDOT	879.57	1506.60	780.71	98.85
NORTHMONT	MONTGOMERY	879.51	7082.50	795.84	83.67
BROOKVILLE	MONTGOMERY	878.72	1966.00	778.70	100.03
FAYETTEVILLE-PERRY	BROWN	878.40	617.50	712.97	165.42
WELLSVILLE CITY	COLUMBIANA	877.51	1688.50	739.41	138.10
CELINA CITY	HERCER	877.42	3323.00	755.87	121.55
FAIRLAWN	SHELBY	876.93	580.00	752.40	124.53
JOSEPH BADGER	TRUMBULL	876.91	1775.00	828.50	48.41
TIPP CITY	MIAMI	876.36	2651.50	809.68	66.68

Plaintiffs' Exhibit 253
SORTED BY TOTAL STATE AND LOCAL SUPPORT (1976)

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYL076/P	CAID76/P
BIG WALNUT	DELaware	875.77	2602.50	747.06	128.71
PORTSMOUTH CITY	SCIOTO	875.72	5051.00	748.45	127.27
DELPRE CITY	WASHINGTON	875.46	2161.50	797.20	78.25
NEW MIAMI	BUTLER	875.25	1513.00	751.64	123.61
UPPER SANDUSKY	WYANDOT	874.05	2350.50	769.53	104.52
CAMBRIDGE CITY	GUERNSEY	873.87	3860.00	810.31	63.56
TWIN VALLEY	PREBLE	873.28	2826.00	751.64	121.64
COVINGTON	MIAMI	873.21	1192.50	784.43	88.78
BELLEVONTAINE CITY	LOGAN	871.86	3177.50	746.36	125.50
JACKSON	STARK	871.43	4854.50	783.29	108.14
GREENEVIEW	GREENE	870.27	1706.00	733.10	137.17
CONTINENTAL	PUTNAM	869.89	953.50	687.78	182.11
CHAMPION	TRUMBULL	868.87	2871.50	725.62	143.26
ALEXANDER	ATHENS	868.81	1639.50	720.01	142.80
JEFFERSON AREA	ASHTABULA	868.30	2493.50	775.92	92.39
WELLINGTON	LORAIN	868.13	1766.50	759.98	108.15
EDGERTON	WILLIAMS	866.92	971.00	767.99	98.93
EAST CLINTON	CLINTON	866.34	1657.50	734.01	132.33
FOWLER-VIENNA	TRUMBULL	865.96	1777.00	780.58	85.39
RIVERSIDE	LOGAN	865.42	913.00	747.54	117.88
BRIGHT	HIGHLAND	865.03	809.00	662.74	202.29
GREENVILLE CITY	DARKE	864.92	4359.50	725.27	139.65
NORTHMOR	MORROW	864.90	1393.00	725.46	139.44
CLERMONT NORTHEASTRN	CLERMONT	864.14	2463.50	724.86	139.28
CIRCLEVILLE CITY	PICKAWAY	863.70	3198.50	783.71	79.99
EASTHOOD	WOOD	862.94	1914.00	766.74	96.20
SAINT MARYS CITY	AUGLAIZE	862.70	2689.00	779.90	82.81
WESTERN RESERVE	MAHONING	862.49	1061.50	775.46	87.03
FEDERAL-HUCKING	ATHENS	862.06	1540.50	681.27	180.79
EAST HOLMES	HOLMES	861.90	1689.50	709.51	152.39
CLAYMONT CITY	TUSCARAWAS	861.74	2809.00	771.43	90.30
ALLEN EAST	ALLEN	861.72	1371.00	770.47	91.25
COLLEGE CURNER	PREBLE	861.03	163.00	822.23	38.80
NAPOLEON CITY	HE'IRY	860.43	2839.00	779.24	81.20
TRIAD	CHAMPAIGN	859.62	890.00	694.96	164.66
OTTUVILLE	PUTNAM	859.54	784.00	727.57	131.97
SANDY VALLEY	STARK	859.46	1910.00	701.25	158.22
ANSONIA	DARKE	858.08	1034.00	721.83	136.25
ELIDA	ALLEN	858.02	3166.00	754.75	103.27
ROSS	BUTLER	857.53	2599.50	771.54	85.99
FREDERICKTOWN	KNOX	856.71	1499.00	733.39	123.32
SYMMES VALLEY	LAWRENCE	856.14	1089.50	665.49	190.65
BLANCHESTER	CLINTON	855.03	2103.00	717.68	137.34
MISSISSINAWA VALLEY	DARKE	854.97	1345.00	711.48	143.49
SOUTH POINT	LAWRENCE	854.42	2378.00	753.51	100.91
WARREN	WASHINGTON	853.77	2754.50	723.25	130.52
MADISON	BUTLER	852.69	2175.50	755.75	96.94
WAYNE	MONTGOMERY	952.56	8721.00	787.82	64.74
BRADFORD	MIAMI	850.87	967.50	719.00	131.86
MAPLEWOOD	TRUMBULL	850.43	1313.00	722.99	127.44
LEETONIA	COLUMBIANA	850.15	1170.00	733.71	116.44
PREBLE SHAWNEE	PREBLE	850.09	2133.50	710.10	139.99
HUBBARC	TRUMBULL	848.62	3595.00	747.51	101.11
FRANKLIN	MUSKINGUM	848.38	2662.50	764.40	83.98

Plaintiffs' Exhibit No. 254
SURTED BY TOTAL STATE AND LOCAL SUPPORT (1976)

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CAID76/P
RUCK HILL K	LAWRENCE	848.29	2379.00	659.65	188.63
NELSONVILLE-YORK CITY	ATHENS	848.08	1936.50	718.17	129.91
REYNOLDSBURG CITY	FRANKLIN	848.01	5053.00	778.43	67.58
GENOA AREA	OTTAWA	847.11	2091.00	758.50	88.61
GALLIA COUNTY	GALLIA	846.95	3253.00	687.55	159.40
RIDGEMONT	HARDIN	844.67	635.50	737.08	107.59
NORTHERN	PERRY	844.40	2211.50	705.05	139.35
NORTH UNION	UNION	844.08	1731.50	691.27	152.81
SOUTHEAST	PORTAGE	843.93	2406.50	730.04	113.90
HARDIN-HOUSTON	SHELBY	843.87	954.50	716.87	127.00
NOBLE	NOBLE	842.78	1302.50	695.09	147.69
NEW CARLISLE-BETHEL	CLARK	842.59	5787.00	758.50	84.09
LOUISVILLE CITY	STARK	841.67	3994.50	727.80	113.87
NORTHWESTERN	WAYNE	841.08	1509.50	732.68	108.41
BLCOM-CARROLL	FAIRFIELD	840.90	1848.00	725.15	115.74
CLOVERLEAF	MEDINA	840.86	3727.00	728.89	111.96
LEIPSIC	PUTNAM	839.74	1076.00	667.74	172.00
RIPLEY-UNION-LEWIS	BROWN	838.43	959.50	675.35	163.08
CLAY	SCIOTO	836.49	982.00	722.96	113.53
GOSHEN	CLERMONT	835.75	3161.00	739.59	96.17
CALDWELL	NOBLE	835.01	1417.50	696.68	138.33
JOHNSTOWN-MONROE	LICKING	833.96	1667.00	715.03	118.93
BOTKINS	SHELBY	833.71	674.50	728.52	105.19
BERNE UNION	FAIRFIELD	833.70	1028.00	725.31	108.39
NORTHWESTERN	CLARK	833.22	2224.50	717.07	116.15
FRONTIER	WASHINGTON	832.42	1508.50	678.71	153.71
SPENCERVILLE	ALLEN	832.17	1243.50	719.00	113.17
TRIMBLE	ATHENS	831.01	1254.50	690.88	140.13
MCCOMB	HANCOCK	830.88	1012.50	684.97	145.91
MECHANICSBURG	CHAMPAIGN	829.95	1068.50	693.46	136.49
GRAHAM	CHAMPAIGN	829.80	2386.50	661.30	168.50
COLDWATER	MERCER	829.25	1799.00	703.20	126.05
OAK HILL UNION	JACKSON	829.13	1588.00	675.98	153.15
EAST LIVERPOOL	COLUMBIANA	828.42	5022.00	648.28	180.13
MINFRC	SCIOTO	828.37	1578.00	666.05	162.32
NORTH FORK	LICKING	827.69	2472.50	682.68	145.02
MADISON	FRANKLIN	827.63	6524.50	730.55	97.08
MINERVA	STARK	827.37	2861.00	747.97	79.40
UNITED	COLUMBIANA	826.31	1559.50	712.43	113.89
HOPEWELL-LOUDON	SENECA	825.86	1081.50	689.32	136.54
FAIRFIELD	HIGHLAND	825.57	716.00	692.12	133.45
LICKING VALLEY	LICKING	825.16	2151.50	700.35	124.81
NEWTON FALLS	TRUMBULL	825.00	2011.50	722.13	102.86
MILTON UNION	MIAMI	823.91	2578.50	733.53	90.38
BLCOM	SCIOTO	823.86	1200.00	641.97	181.88
BLCOMFIELDMESP	TRUMBULL	823.63	632.50	795.03	28.60
OTTAWA-GLANDORF	PUTNAM	822.58	1739.50	696.53	126.05
LITTLE MIAMI	WARREN	822.03	2985.00	721.38	100.66
JEFFERSON	MADISON	820.46	1684.50	749.28	71.17
NORTHEASTERN	CLARK	820.24	4091.00	722.31	97.94
MEIGS	MEIGS	819.59	2847.50	608.45	211.14
DAWSON-BRYANT	LAWRENCE	819.28	1721.50	663.64	154.63
LIBERTYUNION-THURST	FAIRFIELD	817.99	1380.50	674.89	143.10
VINTON	VINTON	815.85	2479.00	621.05	194.80

Plaintiffs' Exhibit No. 255
SURTED BY TOTAL STATE AND LOCAL SUPPORT (1976)

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CAID76/P
EDGEWOOD	BUTLER	815.47	3121.50	716.10	99.37
MARYSVILLE	UNION	814.96	2833.50	684.50	130.46
EASTERN	PIKE	814.90	1011.00	686.44	128.46
WELLSTON CITY	JACKSON	814.48	2036.50	690.39	124.08
RIDGEWOOD	COSHOCOTON	814.42	1854.50	694.42	120.00
MORRIGHEDGEVILLE CITY	LORAIN	813.73	4647.00	727.04	86.69
CENTERBURG	KNOX	813.45	890.50	720.62	92.83
GEORGETOWN	BROWN	811.74	1155.00	705.04	106.70
HOLGATE	HENRY	811.70	856.50	682.43	129.28
JACKSON CITY	JACKSON	810.70	3098.50	676.23	134.46
MOH RIVER-GREEN	CLARK	810.03	3285.00	700.98	109.06
WEST MUSKINGUM	MUSKINGUM	808.19	2334.50	735.64	72.55
BUCKEYE VALLEY	DELAWARE	807.60	2405.00	659.38	148.22
PICKERINGTON	FAIRFIELD	806.67	2310.00	737.13	69.54
CENTRAL	DEFIANCE	805.94	1653.00	694.55	111.39
WASHINGTON	SCIOTO	805.15	2388.00	664.26	140.89
BRIDGEPORT	BELMONT	804.84	1458.00	713.19	91.65
SOUTHERN	COLUMBIANA	804.52	1521.00	673.70	110.82
ANNA	SHELBY	803.49	1013.50	684.02	119.47
LIBERTY-BENTON	HANCOCK	803.21	752.00	707.79	95.42
KALIDA	PUTNAM	802.72	764.50	668.97	133.75
ST CLAIRSVILLE-RICHL	BELMONT	802.25	2712.50	720.68	81.57
WESTFALL	PICKAWAY	802.23	1894.00	667.10	135.12
MILLER CITY-NEW CLEV	PUTNAM	801.70	685.50	646.91	154.79
CROOKSVILLE	PERRY	800.04	1270.00	658.62	141.42
BARNESVILLE	BELMONT	798.33	1567.00	685.12	113.21
NEW LEXINGTON CITY	PERRY	797.94	2102.50	668.92	129.02
HICKSVILLE	DEFIANCE	797.70	1287.00	732.45	65.25
WASHINGTON CT HOUSE	FAYETTE	796.85	2392.50	705.88	90.97
MAKION	MERCER	795.40	1109.50	667.42	127.98
CARROLLTON	CARROLL	794.57	3227.00	661.12	133.46
VALLEY	SCIOTO	794.11	1453.50	650.49	143.62
WAPAKONETA CITY	AUGLAIZE	793.71	3707.50	684.93	108.78
NORTHWEST	SCIOTO	791.80	2088.50	633.57	158.23
LOGAN CITY	HOCKING	791.04	4340.00	670.83	120.20
SOUTHWEST	PERCER	789.60	1109.00	650.90	138.70
SCIOTO VALLEY	ROSS	788.86	1436.00	639.95	148.91
HAMILTON	FRANKLIN	787.71	3182.00	667.98	119.72
CLEARCREEK	WARREN	785.31	2265.00	736.90	48.41
CHESAPEAKE UNION	LAWRENCE	784.04	1782.00	687.27	96.77
FAIRFIELD UNION	FAIRFIELD	782.54	2113.00	639.67	142.87
PAINT VALLEY	ROSS	782.42	1206.00	661.44	120.98
MAYSVILLE	MUSKINGUM	780.43	2548.00	715.30	65.13
EASTERN	MEIGS	780.43	1024.50	674.96	105.46
BRISTOL	TRUMBULL	780.12	824.50	735.24	44.88
TEAYS VALLEY	PICKAWAY	777.16	2920.00	685.65	91.51
WESTERN-BROWN	BROWN	775.24	2446.50	598.72	177.52
WHEELERSBURG	SCIOTO	775.36	1918.50	685.22	90.15
SCIOTO VALLEY	PIKE	773.99	1547.00	605.75	168.24
ARCANUM-BUTLER	DARKE	773.22	1551.50	692.40	80.82
ROLLING HILLS	GUERNSEY	771.96	2390.50	676.76	95.20
SOUTHERN	PEPPER	771.36	1330.50	672.49	98.87
WESTERN RESERVE	HURON	711.30	1496.50	676.36	94.94
FAIRLAND	LAWRENCE	770.77	2021.50	678.47	92.30

Plaintiffs' Exhibit No. 256
SORTED BY TOTAL STATE AND LOCAL SUPPORT (1976)

DISTRICT	COUNTY	TSUP76/P	FTE (76)	GYLD76/P	CA1076/P
HAVERLY CITY	PIKE	770.47	2191.00	641.35	129.12
FORT LORAMIE	SHELBY	767.19	906.00	717.06	50.13
BEAVER	COLUMBIANA	763.37	3046.00	659.49	103.88
ST HENRY CONSOL	MERCER	762.20	1287.50	663.49	98.72
GALLIPOLIS CITY	GALLIA	761.90	3047.50	616.58	145.32
GREENFIELD	HIGHLAND	761.46	2460.00	562.61	98.84
EASTERN	BROWN	761.36	1337.00	540.45	120.91
UNION-SCIOTO	ROSS	760.06	1493.50	630.33	129.73
LAKOTA	SANDUSKY	757.64	2018.00	553.81	103.82
WF STERN	PIKE	755.01	918.00	595.05	159.96
BROWN	CARROLL	754.91	990.00	625.62	129.29
LYNCHBURG-CLAY	HIGHLAND	747.62	1263.00	629.73	117.88
MIAMI TRACE	FAYETTE	744.01	3704.50	626.14	117.87
CARDINGTON-LINCOLN	MORROW	740.27	1242.50	626.22	114.06
TRI VALLEY	MUSKINGUM	739.71	2960.00	653.68	86.03
BELLAIRE CITY	BELMONT	737.00	2968.50	607.67	129.33
FARMINGTON	TRUMBULL	736.87	415.50	684.81	52.06
SOUTHERN	MEIGS	735.58	1068.00	613.30	122.28
ANANDA-CLEARCREEK	FAIRFIELD	734.45	1544.00	616.76	117.69
HIGHLAND	MORROW	733.06	1600.50	574.55	158.51
HILLSBORO CITY	HIGHLAND	732.39	2431.50	624.94	107.45
HUNTINGTON	ROSS	728.66	1287.50	604.72	123.94
UNION LOCAL	BELMONT	722.96	2137.00	615.57	107.39

617 DISTRICTS LISTED

(B) The Distribution of Dollars To School Districts Under The Present Formula. "Equal Yield" in Operation Has Not Yielded Equal Financial Resources For Equal Effort In Ohio's School Districts.

(1) Am. Sub. S.B. 170, if fully funded, is supposed to provide a school district with \$48 per pupil in combined state and local support for each of the first 20 mills levied and \$42 per pupil in total support for each of the next ten mills levied. (Tr. 3193).

(2) Therefore, if the system were to be fully funded and fully effective in doing what it is supposed to do, a school district levying 20 mills would have \$960 per pupil in combined total state and local support. This amount would increase to a maximum of \$1380 as the millage rate rose from 20 to 30. (Tr. 3193).

(3) Am. Sub. S.B. 170 is not fully funded. In 1975-76 it was funded only to the extent that a district received the same amount of basic aid that it had received under the old foundation program (in 1974-75) plus 17% of the difference between that sum and the amount of basic aid it would be entitled to receive if the system were full funded. In 1976-77, the phase-in percentage was increased for 17% to 26%. (Tr. 3193).

(4) In both years, basic aid entitlements were modified by save-harmless provisions, mandated reductions, premiums and other adjustments.
(Tr. 3193).

(5) District power equalizing formulas, which are not a new concept in the financing of public education, are supposed to eliminate, largely or totally (depending upon how the system is operated), the influence of local property wealth upon the financial support of education for students. (Tr. 3194).

(6) Ohio's system is not a pure district power equalizer

since the amount of basic state aid, once calculated, is modified by the following:

(6.1) The premiums and penalties which are distributed among the school districts for compliance or non-compliance with mandated requirements related to pupil-teacher ratios, number of educational service personnel and average training and experience of teachers.

(6.2) The operation of save-harmless provisions. (Tr. 3194).

(6.3) The lack of a recapture provision. If there were such a provision, a district whose tax base produced local revenues in excess of the district power equalizer guarantees would release such excess revenues to the state for redistribution to other districts. At present, these excess revenues remain in the individual districts and have a disequalizing impact on total revenues available from district to district. (Tr. 3195).

(6.4) Discrepancies due to the fact that the equalized millage rate which is used to calculate basic aid is not always the same as the actual millage rate on which a district collects taxes. (Tr. 3195).

(6.5) Distortions produced by funding the formula to an entitlement level of "old" (1974-75) basic aid plus 26% of the difference between "old" and fully funded basic aid. This practice assumes that in each of the 617 districts, "old" basic aid constituted the identical percentage of basic aid which would be received under full funding. In fact, under the old foundation program some districts received basic aid in amounts nearly as great as they would be entitled to receive under full funding of the new system. Therefore, they have only a small basic aid "gap" to close during phase-in. Many other districts, however, received under the old program basic aid which was very substantially less than their fully-funded entitlements would be under the new system. Hence, they have a very large basic aid "gap" to close during phase-in.

When a uniform 26% phase-in percentage is applied to each district, regardless of the size of the percentage or dollar "gap" between its "old" and new basic aid, the resulting basic aid funding levels are, to a great extent, perpetuations of previously existing disparities. Uniform phase-in percentages result in very different percentage increases and dollar increases in basic aid from district to district. (Tr. 3195).

(7) In a district power equalizing (DPE) formula which operates properly and achieves equal yield for equal effort, variations in the guaranteed yield (basic aid plus local revenues) should result from, and correlate directly with, variations in millage. (Tr. 3205).

(8) But Ohio's DPE formula is not effective for even this purpose. Guaranteed yield is influenced by factors other than millage to such an extent that even at full funding the system is, to a great extent, haphazard. (Tr. 3206).

(9) Plaintiffs' Exhibit 175⁴³ (reproduced at end of section) is a scatter diagram depicting the way in which equalized millage rates and total support per pupil for 1975-76 are related. (A point is plotted for each school district indicating equalized millage rate on the horizontal axis, and total support on the vertical axis). (Tr. 3197, Plaintiffs' Exh. 175).

(10) The coefficient of determination is a statistical measure which can be used to describe the extent to which variations in total support are caused by variations in millage rates. For 1975-76, that coefficient was only 13% indicating some, but not much correlation between total support and millage rate. (Plaintiffs' Exh. 175, Tr. 3199).

⁴³ Plaintiffs' Exhibit 175, 176 and 177 were compiled by Dr. Robert Wessel from data provided by the State of Ohio, Department of Education. Accompanying statistical correlations were computed from the same data by Dr. Jay Moskowitz, assistant director of the Education Policy Research Institute of Educational Testing Service, Princeton, N.J. Specific data sources included SF-12 forms, 1974-75 and 1975-76, for each of the 617 school districts.

(11) Since categorical aid is that portion of state aid which is not power equalized or related to millage, removing it from total support will leave only basic aid, which, in a DPE system, should correlate highly with millage. (Tr. 3201).

(12) However, for Plaintiffs' Exh. 176 (reproduced at end of section), which depicts the relationship between 1975-76 millage rates and guaranteed yield (basic aid plus local revenue), the coefficient of determination is only 14.4%. This indicates that the formula did not work well in that year as a district power equalizer — even with categorical aid removed from consideration. (Plaintiffs' Exh. 176, Tr. 3202).

(13) Since 1975-76 millage rate variations could explain only 14.4% of the variations in guaranteed yield, 85.6% of the variations must be explained by other factors such as property valuations, adjustments for mandates, save-harmless payments and the differences between actual and equalized mills. (Plaintiffs' Exh. 176, Tr. 3200, 3202).

(14) Plaintiffs' Exh. 177 (reproduced at end of section) depicts the distribution of districts by millage rate and guaranteed yield for 1975-76 at full funding rather than the actual 17% phase-in level. The correlation between millage rate and guaranteed yield is somewhat improved, but the coefficient of determination is only 41%. (Plaintiffs' Exh. 177, Tr. 3203).

(15) Therefore, even at full funding, millage variations explain only 41% of the variations in guaranteed yield, leaving 59% of the variations to be occasioned by other factors. (Tr. 3204).

(16) There other factors, include mandates, save-harmless, local yield above the guaranteed level, actual v. equalized mills and most significantly, property values. (Tr. 3206).

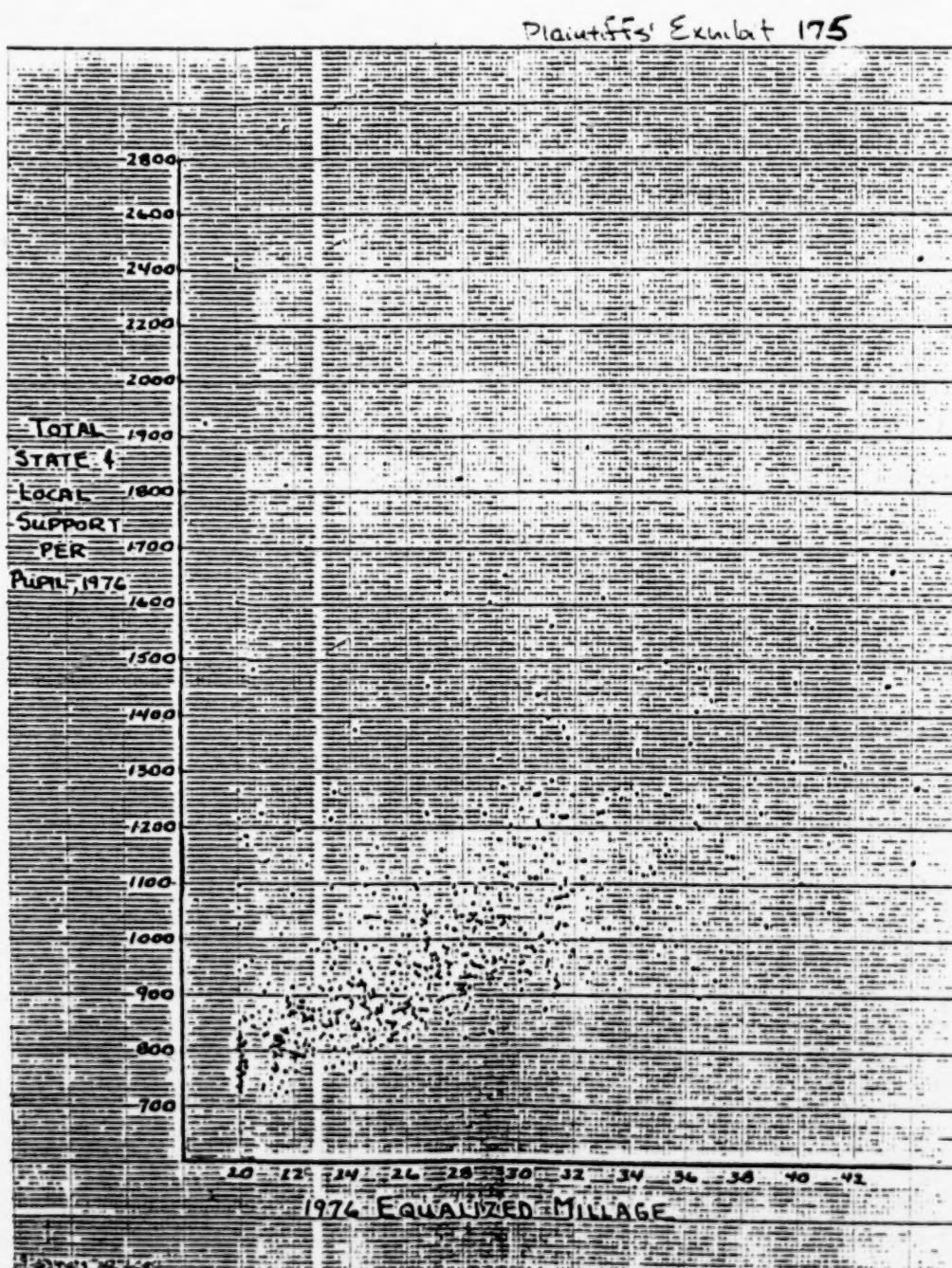
(17) A DPE system should be at least 80% effective but Ohio's, even at full funding, is only 41% effective as a district power equalizer. (Tr. 3206).

(18) If local effort, as expressed by millage rate, should indeed be the proper criteria for determining the level of educational funding and opportunity in a school district (the basic premise of district power equalizing formulas), then Ohio's DPE system does not presently achieve even that purpose; nor would it be able to if it were fully funded. (Tr. 3205).

(19) The inevitable consequence of using millage rates to determine support, as in district power equalizing systems, is that of providing educational opportunities ranging from adequate and desirable to inadequate and austere since some districts will levy 20 mills and some will levy 50. (Tr. 3205).

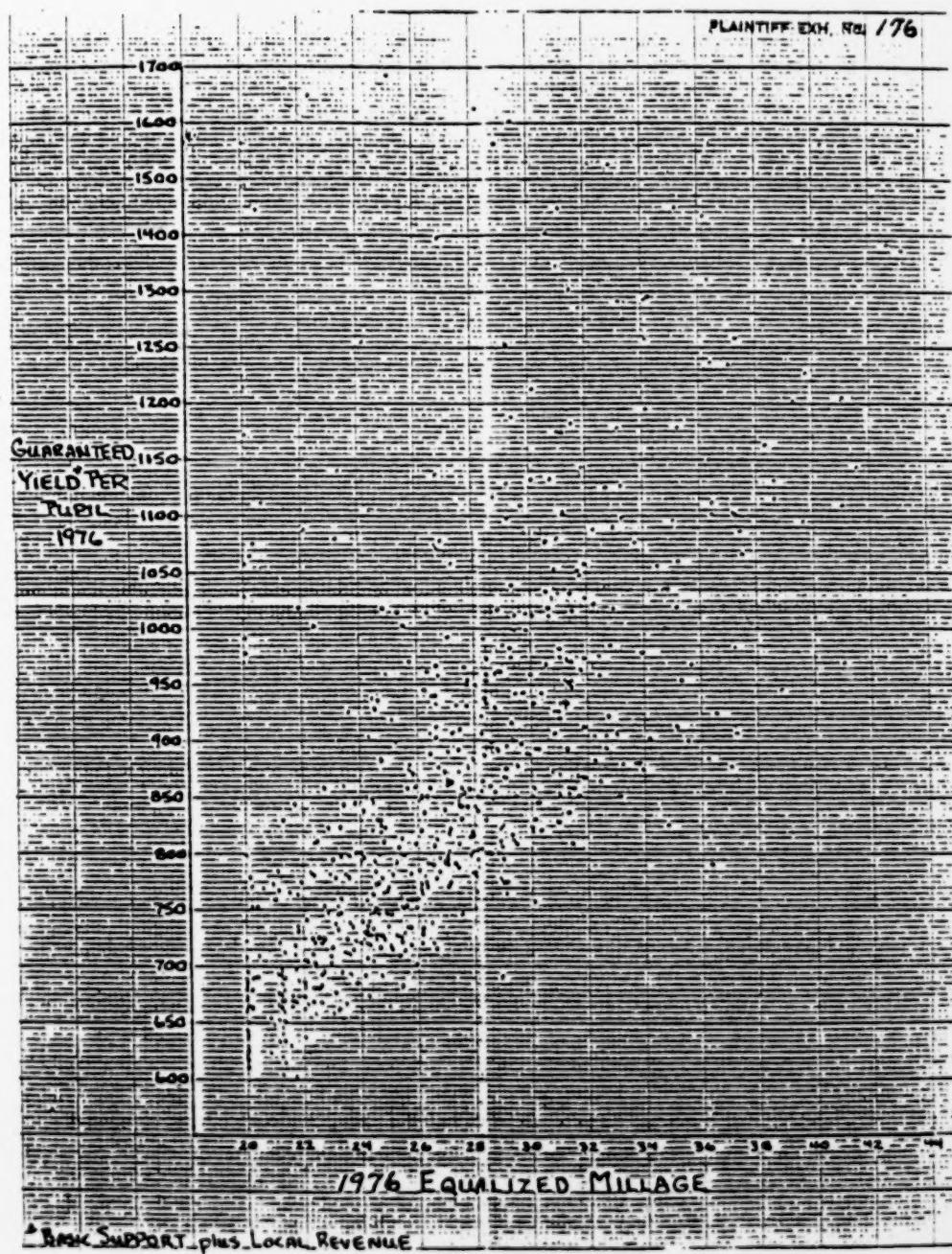
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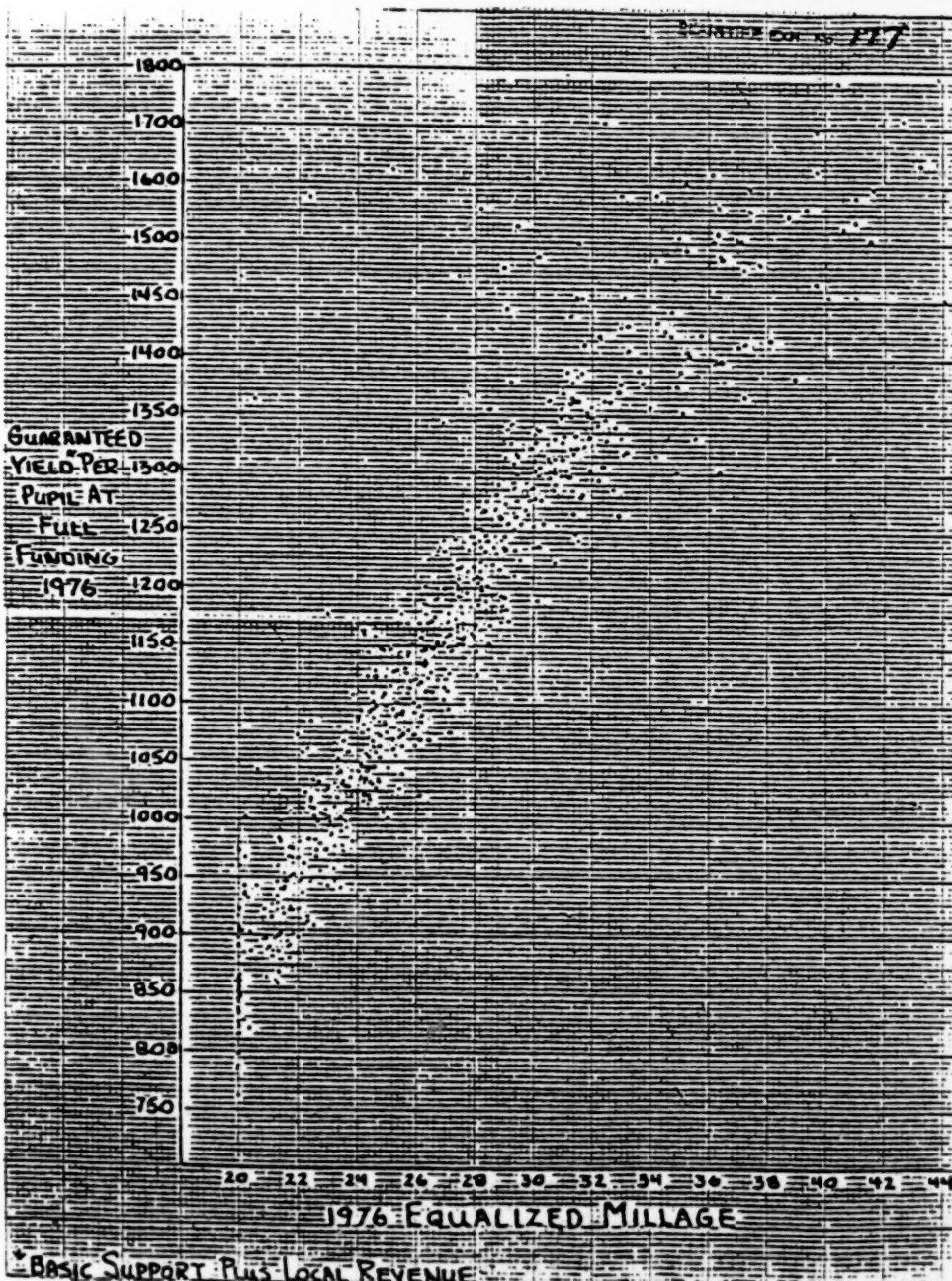
PLAINTIFFS' EXHIBIT No. 175



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PLAINTIFFS' EXHIBIT No. 176





(C) The "Reward for Effort" Component Of The Funding Scheme Accentuates Disparities Among Districts Which Are Based Upon Disparities In School Operating Millage Rates And Creates A Conscious Discrimination Among Children Based Upon The Millage Rates Of Their School Districts

(1) The purported purpose and operational effect of the present formula is that of rewarding the districts which have equalized millage in excess of 20 with extra state funds for each such excess mill, up to 30 mills.

(2) This system thus accentuates the disparities which already exist among school districts in dollars available per pupil, in expenditures per pupil, and in the quantity and quality of educational services (Findings VII(I), (1), (2), (3)), and which result from the differences in the school tax rates of the districts.

(3) While the purported purpose of the "reward for effort" provision of the law is to encourage higher local school tax rates by rewarding the school districts for their extra tax effort, the provision actually establishes a conscious discrimination in favor of the school children who are fortunate enough to reside in the school districts which have high tax rates and thus command additional state funds and against the school children who are unfortunate enough to reside in the school districts which have low tax rates and thus command no or few extra state funds. Defendant's witness William A. Harrison, Staff Director of the Education Review Committee of the General Assembly, conceded that that classification "is some kind of arbitrary action . . ." and that the formula enacts into law ". . . a distinction between those two situations." (Tr. 4857).

(4) The Court finds that the "reward for effort" provision constitutes a discrimination which is unfair to the school children who reside in the low tax rate districts. Those chil-

dren have no control over the tax rates of their school districts. State Assistant Superintendent of Public Instruction G. Robert Bowers, the principal witness for the defendants, conceded, "I don't know that there is much, if anything, that a particular group of children can do to affect the level of expenditures for their education." (Tr. 7293). The following question was asked of Mr. Harrison:

What is it that a pupil could do . . . under the present system to get a better education than he's getting if he happens to live in a school district where the residents either lack the willingness or the capacity to tax themselves greater than they are taxing themselves for education?

Mr. Harrison's answer was:

I would say attend school regularly, study hard, do his homework and do his best.

(Tr. 4858-9).

The system is thus intentionally disequalizing and utterly indefensible educationally because it represents a legislative policy which makes the quality of a child's education a function of an educationally irrelevant factor of the tax rate of his school district.

(5) Martin Essex acknowledged that the effect of Am. Sub. SB 170 is to make the educational level of a school district depend predominantly upon the level of property taxation which is in effect in the district (Tr. 366).

(6) Professor Wessel of the University of Cincinnati, an economist and expert in public finance, explained that the "reward for effort" feature of the formula causes state aid to flow to districts with two characteristics: valuation per pupil under \$42,000 (districts with moderate means in regard to property valuation), and millage in excess of 20. (Tr. 3187). But the districts which are eligible to receive "reward for effort" and or "bonus aid" do not receive it in the same

amount per pupil. "It will vary all over the place depending upon millage and valuation per pupil." (Tr. 3187).

(6.1) According to Professor Wessel's computations, 513 districts received "bonus aid" in 1976-77. One hundred-four districts received no "bonus aid". Of the districts which did not receive it, 43 districts failed to receive it because they were "out" of the formula due to their excess valuation; however 61 of the districts failed to receive any "bonus aid" because they did not levy more than 20 equalized mills. (Tr. 3187).

(6.2) Of the 513 districts which received "bonus aid" in 1976-77, only 137 of them levied 30 equalized mills and received the full advantage of the "reward for effort" provision. (Tr. 3188).

(6.3) Professor Wessel stated that, based upon his analysis of the distribution pattern of "bonus aid", it is clear that this aid is not directed to the districts which need it most, based upon their educational and financial needs. It is a totally capricious system. (Tr. 3188).

(6.4) The data shows that "reward for effort" funds are directed to districts which have varying levels of total state and local support. Such aid, however, did flow to school districts such as Shaker Heights, Mariemont, Ottawa Hills and Chagrin Falls, all of which are among the 25 districts ranked highest in the state in total support per pupil.

(6.5) Professor Wessel observed that the typical district which levies 30 mills and receives the full amount of "bonus aid" is a suburban district which has relatively low valuation, but high personal income, and residents who are willing and able to tax themselves at a high rate. (Tr. 3187).

(6.6) Professor Wessel also testified that, based upon his computations, "bonus aid" represented approximately \$120,-000,000 or 19% of the aggregate of State Basic Aid which was disbursed to Ohio's school districts in 1976-77. (Tr. 3189).

(6.7) In Professor Wessel's opinion, to distribute \$120,000,000 in this capricious manner is not an efficient system of public finance, particularly when educational expenditures are grossly inadequate for many of the school children in Ohio. The criteria for the distribution of state funds should be one of providing an adequate education for all children. (Tr. 3191). The Court adopts that statement and so finds.

(D) Not Only Is It Unfair To Permit The Quality Of A Child's Education To Depend Upon The Willingness Of The Residents Of A District To Tax Themselves For Education, But The Tax Rates Of The School Districts Are Related Far More To Median Family Income Than To Any Other Factor. Thus, The "Reward For Effort" Element Is In Reality A "Reward For Income Wealth" Element.

(1) The defendants acknowledge that the "reward for effort" feature of Am. Sub. S.B. 170 represents the policy of the General Assembly to make the quality of a child's education a function of the willingness of the residents of his school district to tax themselves for education. (Tr. 4826, 6931). The Court finds that even if the disparities existing in educational opportunity could be made to depend solely upon that variable, such a standard would be educationally irrelevant and the system would be unfair to school children. No rational basis exists for discriminating against school children based upon the extent to which the residents of a school district value education. As Roe L. Johns⁴⁴ stated, "a

⁴⁴ Roe L. Johns is a professor emeritus at the University of Florida and president of the Educational Finance Management Institute. Dr. Johns has a Ph.D. Degree from Columbia University with a specialization in educational finance. Dr. Johns studied the method of financing schools in all of the 50 states in 1968 pursuant to a request from the United States Office of Education and has done consulting work in many states at various other times.

child's education should not be a function of the wealth of the district nor should it be a function of [the] ignorance or the prejudices of the people of the district." (Tr. 4247). Dr. G. Alan Hickrod⁴⁵ also observed that the state has the responsibility to assure that the preferences of families are not so low that the educational opportunities or lifetime changes of the children are damaged. (Tr. 7466).

(2) Moreover, equality of educational opportunity will be defeated by any financing formula which relates educational resources to any consideration except educational needs and educational costs. To make the level of educational opportunity available in a district dependent upon the level of interest in education which exist in the school district is as inequitable as it would be to make it depend upon the wealth of the district. It should be noted that Martin Essex expressed the opinion that a child from a poor rural district who has the capacity to benefit from a fine college education is just as entitled to a first rate college preparatory education as is a child who lives in a wealthy suburban school district. (Tr. 236). That ideal is undermined, however, by the present system which is designed to permit the residents of that child's district to deprive that child of a fine college preparatory education simply because they are unwilling to provide it to him. Thus, even if the defendants' characterization of the present system were accurate, the system would have to be condemned as conceptionally unfair. It is impossible to accept the proposition that Ohio can have a system for financing public elementary and secondary education which invites the perpetuation of ignorance.

(3) The evidence shows, however, that the local effort which a school district makes is related to far more than

⁴⁵ G. Alan Hickrod is a professor of educational administration at Illinois State University and director of the Center for the Study of Educational Finance which is adjunct to the University. Dr. Hickrod is Chairman of the Illinois Superintendent's Advisory Committee on School Finance.

the interest of the district's voters in education. It is most closely related to the financial ability of that district's residents to pay property taxes to support education. That fact is clear from the data analysis presented by Dr. Jay Moskowitz (Findings VIII-II(A)), from the testimony of numerous witnesses and from the Staff Report to the Education Review Committee entitled "Personal Income Variations Among Ohio School Districts" (Defendants' Exh. 11-A-8) which states, "Median family income has such a powerful effect on both operating millage and expenditures per pupil that if all districts had similar incomes, their operating millage and expenditures per pupil could be expected to be similar."

(4) Carl H. Heimerdinger, Clerk-Treasurer for the Cincinnati Board of Education, stated that the "reward for effort" feature is not consistent with reality because communities will not accept additional taxation in order to realize low levels of state funding. (Tr. 1791-2). Robert E. Lucas stated that the problem with "reward for effort" is that many districts cannot participate because they have not been able to pass levies to increase their own millage. (Tr. 1249). Roe L. Johns testified that it is unsound school finance policy to reward districts for levying higher millage because it disequalizes educational opportunity and because it encourages the support of schools through the most inequitable form of taxation — the property tax. (Tr. 4243). William A. Harrison stated that if there is substantial variation among school districts in the financial ability of residents to pay property taxes for the support of education, there is reason to question the fairness of the system which rewards children based upon the tax effort made by the residents of the district. (Tr. 4962).

(E) The State Payments To Support The Categorical Programs Are Inadequate And Disequalizing

(1) The evidence shows that the components of the school foundation program under which the state makes categorical grants to districts for handicapped students, for transportation and for Disadvantaged Pupil Impact Aid, are inadequate to defray the cost of educating the students for whose benefit the grants are targeted, and that these payments have a generally disequalizing effect. (The categorical grant system is explained in Findings IV(5) and (22) through (27)). The evidence also shows that there are substantial numbers of handicapped students throughout the state who have special needs but who remain unserved because the General Assembly has not appropriated the funds to serve them.

(2) As Plaintiffs' Exhibit 299 shows, on October 1, 1976, there were 92,316 handicapped children of compulsory school age in Ohio who were reported as not receiving full and appropriate special education programs, including 84,142 who were not receiving any special education. Sixty thousand six hundred seven of those children need speech and hearing therapy. Two thousand six hundred ninety eight and seven tenths special education units are needed in order to serve the 84,142 children not receiving any special services.

(3) More than 80% of all Ohio's school districts pay salaries higher than the state's minimum teacher salary schedule and thus must supplement the state's teacher salary allowance for special education and vocational education units with money from their general funds. (Tr. 5494).

(4) Plaintiffs' Exhibit 262, a memorandum from Martin Essex to the House Finance Committee, states that the state subsidy per pupil for vocational education pupils was \$1,008.05, as compared to an actual cost of \$1,722.12 in joint vocational districts. In the Cleveland district the state reimbursement falls short of the actual salary by an average of \$5365

per teacher. For Cleveland the shortfall for teacher salaries in vocational education alone was expected to be \$2,000,000 in 1976-77. (Tr. 5350).

(5) The state's reimbursement to the districts for transportation represented only 48.99% of the total actual cost incurred by all of the school districts for transporting students in 1975-76. (Tr. 5046).

(6) O.R.C. § 3317.024(F) provides that an amount per pupil not to exceed \$200 times the number of eligible pupils (those on welfare) shall be paid to the districts for the education of educationally and culturally disadvantaged pupils (DPPF payments). The appropriation has remained at the same funding level in spite of the fact that the number of eligible pupils has increased. Thus, the payments have decreased to about \$130 per pupil. The program is thus now funded at a level substantially below the standard called for by the statute.

(7) It is therefore the case that districts are required to spend general funds in order to make up the difference between the number of dollars the state provides to serve special education and vocational education students and other children with special needs, and the actual cost of serving those students. The amount of differential varies among the districts depending upon their costs and it is thus disequalizing. Those treated unfairly are both the handicapped students who are unserved and the regular students whose supportive educational funds are depleted in order to support programs for the special students whose educations are inadequately financed by the state.

(F) The Mandates With Their Penalties And Rewards Penalize The Poor For Being Poor And Reward The Rich For Being Rich

(1) The plaintiffs demonstrated the operative effect of O.R.C. §§ 3317.022(B) (now 3317.022(D)), 3317.023(A), (B) and (C), 3317.51(C), 3317.52(A) and (B), and 3317.53 (A) and (B). Those sections cause a school district to suffer financial penalties for failing to meet mandated pupil-teacher ratios and mandated ratios of educational service personnel to pupils. They also mandate financial penalties or premiums which relate to the average level of training and experience of the classroom teachers in a school district. (Tr. 3137-4).

(2) The mandate relating to student-teacher ratio provides that in 1976-77, a school district shall have 36 teachers per 1,000 students. If there are more students, a school district incurs a penalty of \$679 per student; in 1977-78 the number of teachers per 1,000 students must rise to 38. If there are more students than that per teacher, a school district incurs a penalty of \$716 per student; in 1978-79 there must be 40 teachers per 1,000 students. If there are more students than that per teacher, the penalty is to be \$752 per student. There are no premiums for compliance with this mandate. (Tr. 3174-75).

(3) The second mandate relates to adjustments for average training and experience levels of teachers, and is a method of comparing the average teacher training and experience level of an individual district to that of the entire state, using salary as the indicator. This involves determining the difference between a district's average teacher salary (for that district's teachers placed on the state minimum salary schedule by training and experience), and the state average teacher salary (again, placing all teachers on the state salary schedule), and multiplying the resulting difference by the district's number of FTE teachers. This mandate yields both penalties and

premiums. If a district's average salary is less than the state average salary (indicating that the district employs teachers who have, on the average, training and experience less than the state average), the district is assessed a penalty which is based upon the difference between the district's average salary and the state's average salary, multiplied by the number of teachers. On the other hand, if the district is above the state average, it receives a premium calculated in the same manner. (Tr. 3175-76, 3181).

(4) The third mandate relates to educational service personnel. It requires that in 1976-77, a school district will have three service personnel for each 1,000 students and a penalty of \$57 per student is incurred for excess students; in 1977-78 there must be four per 1,000 students and the penalty is \$75 per student; in 1978-79 there must be five per 1,000 and the penalty is \$94 per student. This mandate involves only penalties. (Tr. 3176).

(5) The penalties and rewards take the form of adjustments to a school district's basic aid entitlement and operate only to the extent that the law is funded. They are not applied to the basic aid of districts protected by save-harmless provisions. (Tr. 3176).

(6) In 1975-76, 401 districts incurred penalties related to one or more of the mandates. Two hundred thirty districts received rewards. In 1976-77, 409 districts incurred penalties and 236 received rewards. (Tr. 3177).

(7) When the basic aid premiums and penalties occasioned by the mandate provisions in the law are examined to determine their relationship to the various levels of total support existing among Ohio's school districts, it is clear that the overall effect of the mandates is to penalize poor districts and to reward the well-financed districts. Plaintiffs' Exhibit 170, which is reproduced herein at the end of this section and groups pupils into deciles ranked by total support, shows that the group of districts in the decile of pupils

with the least total support incurred the highest aggregate loss of basic aid through penalties in 1975-76, (\$589,244); districts in the wealthiest decile received an aggregate net reward of \$494,311. (Tr. 3178-79). Most of the penalties and rewards result from the mandate relating to the training and experience of teachers. Therefore, it is inevitable that the poor districts, which must hire beginning teachers, will be penalized for employing a staff whose level of training and experience is below the state average. (Tr. 3181).

(8) Professor Wessel, an economist with expertise in public financing, expressed the opinion that a system of mandates accompanied by premiums and penalties should be a system in which all who are subject to it have the means to comply with it. This is not such a system. Those who are penalized are those who cannot comply simply because they lack the means. "In effect the state has created a system of inadequate funding for many, many school districts and then penalizes these districts harshly because they're poor. That seems to me to be a gross inequity." (Tr. 3182).

(9) Roe L. Johns expressed the opinion that it is unsound school finance policy for the state to mandate something that it doesn't finance. If the state mandates a salary schedule, the state should finance that salary schedule. It is unsound for the state to impose any mandate which penalizes the school children. (Tr. 4243).

(10) The following superintendents testified that their districts either had suffered or would suffer severe financial detriment due to their inability to comply with mandates: Elwood Wheaton of Mt. Healthy (Tr. 408), Richard McKinney of Blanchester Local (Tr. 452), Paul Schwamberger of Wayne Local (Tr. 453-54), Frank Dick of Toledo (Tr. 546-47), Kimball Howes of Plain Local (Tr. 650), Walter Joseph of Benton-Carroll-Salem (Tr. 669), Richard Coulter of North Union Local (Tr. 705), Phillip Williams of Madison Local (Tr. 744), Highland Souders of Big Walnut Local (Tr. 744),

William Ferrell of Colonel Crawford Local (Tr. 819), Guy DeAngelis of Union Scioto Local (Tr. 884), Jerome Schact of Ridgedale Local (Tr. 913), William Larson of Grand Valley Local (Tr. 941-42), James Ferguson of Ripley-Union-Lewis Local (Tr. 967), Robert Schneider of Seneca East Local (Tr. 1002), James Tesar of Ontario Local (Tr. 1031), Robert Zimpfer of Bucyrus City (Tr. 1072), James Akenhead of Bellair City (Tr. 1089), and Charles Caniford of Federal Hocking Local (Tr. 1009). Plaintiffs' Exhibit 310 contains a breakdown of all the districts which incurred penalties and received rewards under the mandate provisions in 1976 and 1977.

(11) The Court finds that O.R.C. §§ 3317.022(B) (now 3317.022(D)), 3317.023(A), (B) and (C), 3317.51(C) (now repealed pursuant to Am. Sub. SB 170, § 2), 3317.52(A) and (B) (now repealed pursuant to Am. Sub. SB 170, § 2), and 3317.53(A) and (B) discriminate invidiously against the children resident in the school districts which lack the funds to comply with the mandates contained therein; that the General Assembly has established standards without funding compliance therewith and is punishing school children for living in poor school districts. That is a rank inequity.

Net Change In Basic State Support As A Result Of Mandates, 1975-76				<u>Balance of *** Gains and Losses Due To Mandates</u>
<u>Total State & Local Support Per Pupil</u>	<u>Total Gains* Due To Mandates</u>	<u>Total Losses** Due To Mandates</u>		
\$ 722.96 - \$ 835.79	\$ +9,586	\$ -598,831		\$ -589,244
836.49 - 889.18	+39,339	-396,070		-356,732
889.49 - 949.67	+34,139	-380,812		-346,663
950.71 - 994.71	+80,909	-265,324		-184,415
955.37 - 1,056.46	+156,639	-109,458		+47,181
1,058.44 - 1,084.63	+178,518	-22,022		+156,496
1,087.00 - 1,163.23	+220,700	-70,651		+150.049
1,168.68 - 1,221.78	+463,069	-7,336		+455,733
1,223.80 - 1,265.61	+174,451	-2,558		+171,893
1,267.27 - 3,563.00	+500,225	-5,914		+494,311

*Among districts which gained

**Among districts which lost

***Among all districts

(G) The Save-Harmless Payments Distribute State Funds Unfairly and Improvidently

(1) The present school finance law contains provisions, known as "save-harmless" guarantees, which are designed to protect certain school districts from receiving less state basic aid than they received in designated prior years. By law, certain school districts receive varying amounts of guaranteed, "save-harmless" basic aid payments regardless of the amount of basic aid the formula entitles them to receive, regardless of how great their total state and local revenues are, regardless of whether or not their pupils even need the educational resources which can be purchased with the funds, and regardless of the financial and educational needs of pupils in other districts, including those closed for lack of funds. The provisions of the law which operated to produce such an effect in 1975-76 and 1976-77 were contained in Am. Sub. SB 170, Section 8, and the following sections of the Revised Code which were enacted by that bill: O.R.C. §§ 3317.02(E) and 3317.51(B). For the years 1977-78 and 1978-79, save-harmless guarantees were perpetuated by Am. Sub. SB 221 (effective Nov. 23, 1977) in Section 30 of the bill and the following section of the Revised Code which it enacted: O.R.C. § 3317.022(D)(2).

(2) Thirty school districts received save-harmless payments in 1975-76, and 51 districts received them in 1976-77. The state paid out approximately \$5,000,000 in save-harmless funds in 1975-76 and paid out approximately \$10,000,000 in save-harmless funds in 1976-77. (Tr. 3163).

(3) The majority of all the school districts which receive "save-harmless" payments are districts which rank among the wealthiest districts in the state in terms of total support per pupil. In 1975-76, 15 of the 20 wealthiest districts in Ohio (ranked by total state plus local support per pupil) received save-harmless payments. (Tr. 3164).

(3.1) Specifically, the Bratenahl district in Cuyahoga County, which ranked No. 1 in the state in total state plus local support in 1975-76 with \$3563 per pupil, received \$135 per pupil in save-harmless funds in 1975-76 and \$129 per pupil in such funds in 1976-1977.

(3.2) The Lordstown district in Trumbull County, which ranked No. 2 in the state in total state and local support in 1975-76 with \$3543 per pupil, received \$54 per pupil in save-harmless funds in 1975-76 and \$57 per pupil in such funds in 1976-1977.

(3.3) The Beachwood district in Cuyahoga County, which ranked No. 4 in the state in total state and local support in 1975-76 with \$2509 per pupil, received \$62 per pupil in save-harmless funds in 1975-76 and \$68 per pupil in such funds in 1976-77.

(3.4) The North Bass district in Ottawa County, which ranked No. 6 in the state in total state and local support in 1975-76 with \$2419 per pupil received \$620 per pupil in save-harmless funds in 1975-76 and \$1645 per pupil in 1976-77.

(3.5) The Princeton district in Hamilton County, which ranked No. 10 in the state in total state and local support in 1975-76 with \$1879 per pupil received \$61 per pupil in save-harmless funds in 1975-76 and \$66 per pupil in such funds in 1976-77.

(4) Not one of the 377 districts which received less than \$1000 per pupil in total state and local support in 1975-76, where conditions of widespread educational deprivation are found to exist, received a penny in save-harmless funds in 1975-76.

(5) Not one of the large urban districts in which conditions of educational deprivation also exist received a penny in save-harmless funds in the first two years of the present system's operation. This means, of course, that none of the

districts which were forced to close for lack of funds received any save-harmless funds.

(6) Thus, at a time when the public schools in Ohio are woefully underfunded and educational deprivation is widespread, when school districts are so starved for funds that they have to close the doors of their schools, the General Assembly has authorized the disbursement of "extra" basic aid funds to a number of relatively wealthy, and several exceedingly wealthy, school districts.

(7) The superintendent of one of the districts which receives save-harmless funds admitted that his district did not need the money. Robert Holloway, the Superintendent of the Beachwood City District in Cuyahoga County testified that in 1976-77, Beachwood generated \$2546 per pupil from local property taxation alone. (Tr. 3712). (Beachwood levies 48.9 mills on a tax base of \$53,657 per pupil. It's median family income was \$21,792 as shown by the 1970 census.) (Tr. 3710-11). Because of its high valuation per pupil, Beachwood is not "eligible" to participate in the present state basic aid funding formula. Yet in 1976-77 that district received a total of \$174,000 (\$68 per pupil) in save-harmless funds. (Plaintiffs' Exh. 168A). The following questions and answers appear on pp. 3713-14 of the transcript:

Q. Now, sir, how would you characterize generally the quality of the educational program which Beachwood School District offers its students?

A. Well, I think it's excellent.

Q. Dr. Holloway . . . would be the Beachwood School District be able to offer an excellent educational program to its students without the \$174,000 in state aid which it received in 1977?

. . . .

A. . . . I will have to answer yes. . . . I'd be ridiculous if I said we couldn't operate a quality program with that expenditure.

(8) The plaintiffs established that a reallocation of all of the funds which the state disbursed in save-harmless payments could have achieved certain very worthwhile educational purposes. The \$5,000,000 that was disbursed in 1975-76 could have kept the Toledo schools open for the 13 days they were forced to be closed; or \$125 per pupil could have been provided to all of the districts that had to close in 1976; or each one of those districts which had to close could have been brought up to a level of \$1000 per pupil in total state and local support. The \$10,000,000 that was disbursed in save-harmless payments in 1976-77, if reallocated, could have made it possible for districts which are in need of teaching personnel to hire 1,000 more teachers; two million more textbooks could have been purchased; substantial repairs could have been made to physical facilities; libraries in each of the districts in the state could have been augmented by several thousand books; an additional art or music teacher or coach could have been added in every district. (Tr. 3169-70).

(9) The provisions in the present law for the payment of save-harmless funds without regard to a district's total resources or its financial needs, particularly when a majority of the school districts are in acute financial distress, and when a majority of Ohio's school children are suffering educational deprivation and numerous districts are forced to close for lack of funds, accentuate the financial disparities which exist among districts and waste substantial amounts of needed educational dollars irresponsibly. The save-harmless provisions are educationally indefensible.

(H) General Findings About the Statutory Scheme And The Legislative Default In School Finance

(1) The present law is difficult to characterize because it is apparently designed to serve many masters. Up to a point it attempts to reduce the disparities in the tax bases upon which the school districts draw for the preponderance of their operating revenues. One element of the law is that it seeks to induce districts to tax themselves more heavily by paying extra dollars for mills levied in excess of 20. Clearly, the law's purpose is more that of providing taxpayer equity than that of equalizing educational opportunity.

(2) The operational design of the law itself, as well as the testimony of its proponents, makes it clear that the General Assembly has made the conscious choice to leave the educational fate of the school children of Ohio in the hands of the voters of the school districts. And it has made that choice at a time when it is clearly apparent that in the districts where a majority of the school children reside the voters are turning their backs on the school children. Thus, the present system represents a formal educational default on the part of the General Assembly.

(3) It is undisputed that the law does not even purport to equalize the provision of educational opportunities, or educational resources, to the school children of Ohio, or even to the school districts. The emphasis of the statutory scheme is rather upon a measure of equity for taxpayers in the form of equal access to state aid. The defendants contend that the system is designed to be "wealth neutral" insofar as property wealth is concerned. (Defendants' Exhibit VI(B)(1) through (7). Even if this is so, such an objective is not consistent with the General Assembly's proper concern for equalizing educational opportunity.

(4) In no sense does the statutory scheme speak of educational cost or educational need. And the record is devoid of any evidence that the General Assembly, in formulating the

present law, has given any consideration to whether the number of dollars per pupil which the school districts can expect to derive through a combination of local tax revenues and direct state payments will be sufficient to purchase the resources which are needed to provide educational programs for the children they have the duty to educate. (Tr. 4934).

(5) Consequently, the level of funding for public education which has been established by the Ohio General Assembly is a function not of what is needed for public education in Ohio, because the General Assembly has not informed itself about what is needed (Tr. 4934), but of what can be spared for education from existing state revenues. At least this much is certain: the level of funding is now so low that the equalization of the state's resources which are now committed to financing public elementary and secondary education would result only in the equalization of poverty.

(6) The proponents of the present system refer to it as a district power equalizing system. The Court is of the belief that such a system is misapplied in a state such as Ohio where the school districts have no direct taxing power and can impose taxes for education only with the approval of the voters. In such a state there is no district taxing power which can be equalized.

(7) The Court also finds that equalizing the taxing capacity of school districts rather than equalizing the educational opportunities of school children is inimical to the concept of equality of educational opportunity. In the matter of education, the State has a duty to see that a thorough and efficient school system is provided for school children. To ignore that duty and, instead, to consign the school systems of the districts to the whims of the voters, is to imbue the voters of every school district with the power to deprive the children of their district of a satisfactory educational opportunity. Such a concept is, by definition, the abdication by the General Assembly of its indisputable duty to make provision for a thorough and efficient system of common schools through-

out the state. Martin Essex's statement that it is his belief that the State's obligation extends to the school districts rather than to the school children (Tr. 377-8) is symptomatic of the misconception which underlies the present system.

(8) The Court also finds from the evidence that the process by which the General Assembly formulates the measures of educational finance is politicized in a special interest sense to a far greater degree than the legal interest of the school children of Ohio can reasonably tolerate. Several provisions of the statutes themselves can be explained only in terms of special interest pressure. For example, no consideration other than political logrolling can account for the educationally indefensible save-harmless provisions under which education dollars are disbursed to affluent school districts at a time when destitute districts are forced to close their schools for lack of funds. Another example of special interest pressure is the mandate requiring the employment of certain numbers of professional staff without regard to the effect which such a requirement may have upon other educational considerations or upon financial considerations in the various districts. Moreover, the General Assembly's preoccupation with equalizing tax bases and tax rates rather than equalizing educational opportunity indicates a far keener legislative sensitivity to the demands of voters than to the needs of school children.

(9) Several witnesses testified to the manner in which the interests of education are sacrificed in the process by which school finance legislation is formulated. Superintendent Briggs of Cleveland stated:

As I have observed the legislative process, it is a typical political process with members of the Legislature representing primarily the viewpoints of the constituents of their area with each, naturally, with the desire of getting the strongest return to the school districts of their area or other benefits for their area. And since the legislative process is a very bad one, encompassing many, many kinds of pieces of legislation, school legislation many times becomes one of those trading items

that is not always weighed totally on the basis of its own merits, but rather on the basis of legislative trade-offs, legislative favors and so on.

(Tr. 1520).

Former Ohio Governor Gilligan described the phenomenon by relating the manner in which the legislation which he submitted, providing for the distribution of educational funds in a manner designed to equalize educational opportunities as well as the tax burdens of taxpayers with similar wealth and income was altered so that it became less equitable in both respects by the time it was adopted. He has no reason to believe that the political pressures are any different today than they were then, and he expressed the belief that legislators feel it their duty to protect the interest of their constituents rather than the welfare of the school children of the state generally. It is his belief that meaningful reform of school finance cannot be accomplished without judicial intervention. (Tr. 4185-91).

(10) The Court believes that the total legislative default in the matter of public elementary and secondary education is of such a dimension that the legislative process alone is powerless to protect the educational rights of the school children of this state.

IX. IT IS FEASIBLE FOR THE GENERAL ASSEMBLY TO FINANCE ELEMENTARY AND SECONDARY EDUCATION IN SUCH A MANNER AS TO GUARANTEE ESSENTIAL EQUALITY OF EDUCATIONAL OPPORTUNITY AND TO PROVIDE THE SCHOOL DISTRICTS WITH SUFFICIENT FUNDS TO ENABLE THEM TO DELIVER AN EDUCATION OF HIGH QUALITY TO THE STUDENTS

(1) The plaintiffs have demonstrated convincingly that the present system cannot reasonably be excused or rationalized on the ground that it is as feasible a method of financing public education in Ohio as is any other system which might be devised. There are indeed feasible methods for financing the public schools of this state efficiently and fairly and with a level of funding which will reasonably ensure the provision of an education of high quality.

(2) One such method, described by Professor Wessel, would operate in the following manner:

(2.1) It would be predicated upon a determination of what educational criteria are necessary to provide a thorough and efficient system of public education for Ohio's pupils and what such a system presently costs. (As Finding X shows, *infra*, such a determination can and, indeed, has been made.) The cost of providing such an educational system is reasonably estimated to be approximately \$1700 per pupil in Ohio at the present time including the cost of educating students who are now being served by categorical programs. (Tr. 4243, 3219).

(2.2) The funding level would be modified depending upon the type of school district and the type of students. The modifications would be of two sorts. One would relate to the variations in educational costs existing among the districts. For example, total educational costs are generally higher in the large cities and lower in the rural districts. The

hypothetical \$1700 norm would be modified by an educational cost index. It would be somewhat below 100% in most rural districts and above 100% in most inner-city districts. (Tr. 3219).

The second modification would relate to the service intensity required to educate each district's pupils. The service intensity would be measured by the number of the district's ADC pupils and handicapped pupils or by pupil weighting. (Tr. 3220).

(2.3) The two indexes of cost and service intensity would be applied to establish the total support level for each individual district.

(2.4) Each district would levy twenty mills on its tax duplicate. The state would supply the difference between the amount which each district actually generates with a levy of 20 mills and the amount necessary to yield the total number of dollars per pupil which is that district's indexed, predetermined support level. (Tr. 3221).

(2.5) Districts would be permitted to levy more than 20 mills if they wished to finance educational services beyond those which were obtainable with the funds the state guaranteed to them. (Tr. 3221-22). So long as the level of funding absolutely guaranteed to each district were high enough to ensure the provision of a high quality educational program, permitting districts to exceed that level by means of additional local tax effort would not create inequities of any educational or legal consequence. The inequities which are of concern are those which exist under the present system causing some districts to be lavishly financed while most of the rest are financially-deprived. (Tr. 3222).

(2.6) The total cost of financing such a system would be approximately \$3,400,000,000 per year. The total property tax revenues in the system would be reduced by about \$400,000,-000. Approximately \$1,200,000,000 in increased funds from

general state revenues would be needed. The most likely sources for those funds are the income tax and the sales tax. The rates of such taxes could be raised to generate the needed additional revenue without straining the taxpaying capacity of the people of Ohio. (Tr. 3223-25).

(2.7) The state's contribution to the total of state and local funds in the entire system would be 70% as compared to approximately 38% under the present system. (Tr. 3236).

(3) Such a system would guarantee substantial equality of educational opportunity to the school children of Ohio and would guarantee a high quality education to every school child in Ohio so long as the support levels for the school districts were adjusted annually to keep pace with inflation. Because the system would be addressed to educational needs and educational costs, the quality of a child's education would not be a function of the property wealth or the income wealth of his school district or of the capacity of his board of education to secure the passage of tax levies. (Tr. 3235-37). Rather, the quality of a child's education would be a function of the wealth of the state as a whole.

(4) Professor Hack of Ohio State University agreed in principle with Professor Wessel. Dr. Hack estimates that the present target level may be approximately \$1600 per pupil. And Dr. Hack would "power equalize" the first three additional mills of local tax effort above the guaranteed support level. (Tr. 4517-25). Professor Roe L. Johns testified that the approach outlined by Professor Wessel represents sound school finance policy in principle and design. (Tr. 4255). Dr. Johns estimates that the present level of the state, guarantee should be set at about \$1700 per pupil because at the present time it is not possible to provide reasonable pupil-teacher ratios, reasonable salaries, equipment, and instructional materials and supplies for less than that amount. (Tr. 4243).

(5) The Court notes that several noted experts in public finance and school finance share the opinion that the school

finance system described above is a feasible method by which the General Assembly could make provision for a thorough and efficient system of common schools throughout the state. The Court notes also that the defendants did not present any evidence to contradict the proposition that such a system is, and has been, a feasible alternative to the present system. Thus, the Court finds that there has been and is a feasible alternative system for financing elementary and secondary education available to the General Assembly. The Court does not find that the system presented by the plaintiffs is the only feasible one. Certainly there are other feasible systems for financing public education in Ohio. The fact is, however, and the Court finds, that the General Assembly has chosen to avoid enacting any system under which the state plays the dominant financing role, in which the level of funding is high enough to provide high quality education throughout the state, and in which essential equality of educational opportunity is guaranteed to the school children of Ohio.

X. THE COMPONENTS OF A HIGH QUALITY EDUCATIONAL PROGRAM CAN BE IDENTIFIED AND FINANCIALLY QUANTIFIED

(1) The plaintiffs presented, through the testimony of John H. Grate, Director of Research and Development for the Cincinnati Board of Education and James D. Stock, Superintendent of the Lebanon City District and former Assistant Superintendent of the Princeton City District, a meticulously organized and costed-out model of a hypothetical school district equipped to provide its students an education of high quality. The work on the model was done in consultation with Dr. Robert E. Lucas, President of Wilmington College and former Superintendent of the Princeton City District. (Tr. 4345-4436, Plaintiffs' Exh. 290).

(2) Mr. Grate testified that the basic approach used in developing the model district was to identify the manpower

resources necessary to deliver a high quality program and then to cost out those resources.

(3) Mr. Grate testified that the model district should have at least one high school and should have students who represent a variety of socio-economic status. The Princeton School District has many of those characteristics and thus the model district is similar to the Princeton district, but does not exactly replicate it.

(4) The basic model was developed and then a high intensity need district was developed. A high intensity need district is a district in which there is a high incidence of children from families on welfare or a sizeable number of low-achievement pupils.

(5) The model school district has approximately 8,800 pupils, which is approximately the enrollment of the Princeton district. The pupils are divided into eight elementary schools of approximately 600 pupils each, two junior high schools each with grades 7 through 9 and 1,000 pupils and one senior high school with 2,000 pupils.

(6) In the model school district about 15% of the senior high school pupils attend a joint vocational district. In determining the full-time equivalent enrollment, $\frac{1}{2}$ of the vocational students and one half of the kindergarten students are counted. The full-time equivalent average daily membership is thus 8,255 pupils.

(7) The organizational arrangement in the model school system is fairly traditional. However, the model can be reorganized so that a school district can arrange itself into a two year junior high school and a middle school or a non-graded school.

(8) The instructional personnel are allocated on the basis of 20 pupils per teacher for elementary school classes and 25 pupils per teacher for secondary classes in the regular classrooms. Mr. Grate testified that he feels that it is necessary

to have class sizes at the elementary level which are small enough to adequately deal with the teaching of basic skills.

(9) The model establishes department heads at the secondary level and executive teachers at the elementary level in order to provide release time for the teachers.

(10) The model assumes that the district's buildings are in reasonable shape. If there are unusual capital outlay needs or unusual transportation needs, those costs would have to be added to the financial requirements of the model.

(11) Each elementary school in the district has kindergarten through sixth grade with a total of 600 pupils in the school. The model assumes approximately 80 children per grade. The classroom organization is basically self-contained classes of approximately 20 pupils per class, 15 pupils in the high intensity need district.

(12) The 600 students require two kindergarten teachers and four teachers for each of the grades one through six. If it is a high intensity need district, there is an additional half time kindergarten teacher and an additional teacher at each grade level. The pupil-teacher ratio, which is calculated on the basis of all personnel who are actually engaged in the teaching process, is 16 to 1 and, in the high intensity need situation where there are additional staff, it is 13 to 1.

(13) In the elementary school there is one principal and one secretary. If it is a high intensity need district, there is also a clerk-typist.

(14) National statistics indicate that the incidence of special education is in the range of 7% to 12% of the student population. The model assumes a conservative percentage of such students. Thus, 7% of the student population of 600 equals 40 youngsters. Three teachers plus one-full time special therapist would staff the special education classes. The class size would be approximately 13 to 1. If the district were a high intensity district, there would be more children in the cate-

gory of learning disabled and mentally retarded and an additional special education teacher would be required. Since the model assumes the mainstreaming of children, one additional special education teacher would be sufficient in the intensive need school.

(15) The educational service personnel in the elementary schools include an art teacher, a music teacher, a quarter-time instrumental music teacher, a physical education teacher, an academically talented teacher, a career education teacher, a full-time resource center librarian, and a part-time nurse. A high intensity need school would have a full-time nurse, but would not require any additional educational service personnel.

(16) The basic school is staffed with four instructional and administrative aides who work with the teachers and the principals. The high intensity need schools have eight such aides. The basic school is staffed with four cafeteria personnel and three custodians. A high intensity need school district has one additional cafeteria personnel, and two additional custodians.

(17) Thus, the total personnel needed in the elementary school of the basic district is 36.25 certificated personnel and 12 non-certificated personnel. The high intensity need district has 8½ additional certificated personnel and eight additional non-certificated personnel.

(18) The average daily membership of each Junior High School is 1,000 pupils in grades 7 through 9. The teachers would be organized into teams of 5. Each team would include an English teacher, a reading teacher, a math teacher, a science teacher, and a social science teacher. Mr. Grate testified that the team approach is presently utilized in the junior high schools in the Princeton District and that the junior high school task force of the Cincinnati district concluded that such an organizational arrangement is very im-

portant in dealing with the needs of junior high school youngsters.

(19) The junior high schools would be staffed with three counselors and the junior high school in a high intensity need district with four counselors. Each school would be staffed with three clerk-typists to work with the three counselors or four clerk-typists if there are four counselors.

(20) The other elements of the junior high school model are similar to the elements of the elementary school model. The certificated personnel for the junior high schools total 68½ persons for the basic district and an additional 10½ persons for the high intensity need district. The basic model for the junior high school requires 24 non-certificated personnel plus an additional 12 non-certificated personnel in a high intensity need district.

(21) The model senior high school has approximately 2,000 pupils, 300 of whom attend the joint vocational district school. Thus, the fulltime equivalent number of students is 1,775 pupils in grades 10 through 12.

(22) The high school is organized according to departments with each department head receiving release time in order to supervise other teachers. Each class has approximately 25 pupils. The pupil-teacher ratio is approximately 19 to 1 and 18 to 1 in the high intensity need school.

(23) Mr. Grate testified that the administrative staff in the model high school is relatively larger than in the elementary or junior high schools. Plaintiffs' Exhibit 290, which is reproduced herein, sets out the administration of the high school as one principal, two assistant principals, one business manager, one athletic director, one secretary, one clerk-registrar, one receptionist, and four clerk-typists. In the high intensity school district there would be an additional assistant principal and an additional clerk-typist. Mr. Grate testified that the increase in staff between basic program and the high

intensity program is more modest at the high school level than at the elementary level because of increased flexibility within the high school. In addition, the model district takes a preventive approach by dealing with youngsters intensively at the elementary level thus avoiding some of the problems encountered at the secondary level.

(24) The high intensity high school requires additional teachers in the basic subjects of reading, English and math. Plaintiffs' Exhibit 290 sets out the numbers of staff which are required for each specific subject area. The total personnel required in the model high school is 98½ persons in the basic program and an additional 10 persons in the high intensity need program. The number of non-certificated personnel required in the basic program is 43 plus an additional nine persons in the high intensity need program.

(25) The model district is staffed with a superintendent, two secretaries, a clerk-treasurer and an assistant clerk-treasurer in addition to one account clerk and one bookkeeper.

(26) It is also staffed with a director of curriculum and instruction, a secretary to the director and five supervisors (one at the primary level, or at the intermediate level, one in program development, one in career education, one in library services). The model district has department heads or executive teachers to supervise teachers at the local level. The model district is staffed with a psychometrist to assist in the administration of standardized tests. In the curriculum and instruction department there are five clerk-typists.

(28) The model district has a director of pupil personnel and a secretary. It has two psychologists and the special need district has two additional psychologists. The model school district is staffed with a supervisor of special education, a social worker and attendance officer. There is an additional social worker and attendance officer in a high intensity need district. There is one security officer in the basic district and two security officers in a high intensity need district.

(29) The model district is staffed with a director of staff personnel, a secretary and a manager of personnel records. The business department of the model district is staffed with a director, an assistant director, a secretary, and four managers (data services, food services, purchasing, and warehouse). In addition, the model district is staffed with a specialist of duplicating services, one maintenance person for the central office buildings, six custodians, four account clerks, three clerk-typists, and one switchboard receptionist.

(30) Mr. Grate testified that he attempted to limit the number of additional personnel in the high intensity need district and attempted to allocate the additional people at the school level rather than at the central office level. He feels that the effort required to coordinate services in a district the size of the model district is less than that which would be required if the model district had several high schools. If the model district were aggregated to several times the size of the present model, the organization of the central office would change. There might be a supervisor of math and other such subject areas at the district office level. Mr. Grate stated that, obviously, a district with multiple high schools requires greater coordination.

(31) The total number of personnel required for the central office in the basic model is 16 persons with three additional certificated personnel added in the high intensity need district. The total requirement for non-certificated personnel is 40 plus an additional three persons in the high intensity need district.

(32) Mr. Grate testified that in his opinion the staffing in the model school district is realistic as well as reasonably conservative. He stated that the number of personnel provided for in the model district would provide a well rounded program including vocational and special education programs. It would provide a full range of courses and extra-curricular activities, as well as adequate support services. It would in most cases allow the students to exploit their talents to their fullest and would offer a high quality educational program.

(33) Mr. Grate testified that the basic method used to determine the cost of the model district was to identify the manpower needs, then to determine the portion of the budget required to pay for the manpower, and then to determine the rest of the expenditures on the basis of the percent of the total budget. The first step was thus to establish a salary schedule for personnel.

(34) Mr. Grate testified that he and Mr. Stock did not have the average salary schedule figures from the State Department of Education for the current year, 1976-77, or even for the prior year 1975-76. Therefore, they reviewed a document from the Ohio Public Expenditures Council which indicated the average salaries for a number of classifications for the school year 1975-76. Mr. Grate testified that they compared the personnel cost information from the Ohio Public Expenditures Council with the average salaries in the Cincinnati District. The 1975-76 salaries in the Ohio Public Expenditures document were very low compared to those being paid by Cincinnati. Since there was a 20 cent difference between the two figures, Mr. Grate applied a 20% increase to every classification in the data provided by the Ohio Public Expenditures Council. In this manner he calculated the cost of all of the personnel in the model district.

(35) The National Comparison of Local School Costs for the 1976-77 school year prepared by Market Data Retrieval contained, for various states, school district costs in terms of percentages. Mr. Grate relied on the Ohio data book in this booklet and calculated that the total expenditures for personnel salaries accounted for an average of 71% of the total budget of each Ohio school district. Mr. Grate then calculated the total budget for the model district and applied the percentages for each category of expenditures, thus arriving at the total expenditures for the model school district.

(36) The administrative costs of the basic program in the model school district include \$332,822 for professional salaries,

\$185,875 for secretarial and clerical salaries and \$101,289 for all other expenditures for administration. Thus, the total expenditures for administration are \$629,986, which amounts to \$76.32 per pupil for administration and represents 4.73% of the total current expenditures of the district.

(37) Mr. Grate testified that this 4.73% for administration is approximately 1% higher than the average administrative expenditures for all Ohio school districts as reported in the 1975-76 Cost Per Pupil publication of the State of Ohio Department of Education. He further stated that it is 1% higher than the average for city districts.

(38) The total expenditure for instruction in the model school district is \$8,549,975 or \$1,035,730 per pupil. The expenditures for instruction amount to 64.15% of the total net current expenditures. Mr. Grate testified that this figure is the same as the average percentage reported in the Ohio Costs Per Pupil booklet for city, exempted village, and local school districts. Salaries for classroom teachers, professional, secretarial and clerical persons comprise the largest percentage of any school district's budget. Expenditures for textbooks, library materials, audio-visual materials, teaching supplies, and other instructional expenses constitute a smaller percentage of the budget. According to Plaintiffs' Exhibit 290, the salaries for classroom teachers account for 49.65% of the district's total expenditures.

(39) The total net current operating expenditures for the basic district in the model school district is \$13,327,473 which comes to approximately \$1,614.47 per pupil.

(40) The model also provides \$502,446 or \$60.87 per pupil, for transportation (3.77%), \$33.26 per pupil for current capital outlay and \$66.83 per pupil for debt service. Thus, the grand total per pupil expenditure is \$1,765.43.

(41) A district with unusual kinds of transportation needs, would require greater expenditures for transportation. Similar-

ly, a district with old, poorly maintained buildings would require a greater current capital outlay.

(42) Mr. Grate testified that in his opinion the figures reflected on page J of Plaintiffs' Exhibit 290 reasonably reflect the cost of the model school district at the present time. However, he stated that since 71% of the budget consists of professional salaries (including fringe benefits), a variance in salary levels would affect the total cost of the model as well as the per pupil expenditure. Thus, the salary schedule to a great extent determines the cost of the program.

(43) The high intensity need district has additional personnel requirements and thus it has additional salary costs. The other elements of the high intensity need district were assumed to cost the same as the basic district. However, Mr. Grate stated that a high intensity need district might require replacement of textbooks more frequently than a basic district.

(44) The total net current operating expenditures for the high intensity need district amounts to \$16,774,146.00 which equals \$1,910.86 per pupil. The grand total expenditure, which includes transportation, current capital outlay and debt service, is \$17,023,256 or \$2,061.81 per pupil.

(45) Mr. Grate stated that in his opinion the total expenditures reasonably reflect the cost of a high intensity need district if the lines of his model were followed. They might vary, however, based upon the salary schedule. Often high intensity needs districts have teachers with specialized skills or more experience and thus are paid higher salaries.

(46) Mr. Grate also testified that the measure of a high intensity need district would be the number of students whose families were on welfare and the number of students with low achievement levels. There would be a range for the high intensity need of the various districts. Some districts would have fewer children in the high intensity need area than other dis-

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tricts. Most of the major cities including Cincinnati and Cleveland would be high intensity need districts.

(47) Mr. Stock corroborated Mr. Grate's testimony concerning the soundness of the model and stated that the staffing ratios in the model were slightly higher than in the Princeton district.

(48) The Court finds that, because the model presented by the plaintiffs is carefully conceived and conservatively costed, and because it is based upon the experience of the Princeton district which provides a high quality education but neither has excess funds nor wastes its resources, the plaintiffs have shown, through the testimony of Messrs. Grate and Stock and Plaintiffs' Exhibit 290, that the essential elements of a school district qualified to provide an education of high quality can be identified and financially quantified. The Court also finds that the plaintiffs have shown what those elements and costs reasonably are. Allowing for a margin of error of 10%, the Court believes it may reasonably conclude from the evidence that the cost of providing an education of high quality in a school district of average intensity in this state at the present time is approximately between \$1,589 and \$1,941 per pupil. In a high intensity need district that cost is approximately between \$1,855 and \$2,267 per pupil. This conclusion is consistent with the testimony of Messrs. Grate and Stock. It is also consistent with the testimony of Professor Wessel, Professor Hack, Professor Johns and former U.S. Commissioner of Education Harold Howe, as well as that of numerous superintendents and other educators who testified in the case. (Findings VII(I) (1.4)). It is clear to the Court that it is entirely feasible for the General Assembly to determine with reasonable exactness the amount of money necessary to deliver an education of high quality to the pupils in any school district in this state.

MODEL SCHOOL DISTRICT

Description and Cost Analysis

A model school district has been described for the purpose of a cost analysis of the resources and educational inputs necessary to provide a thorough and efficient instructional program. The model district serves approximately 8,800 pupils in eight elementary schools, two junior high schools, and one senior high school. Fifteen percent of the senior high pupils (300 pupils) will attend a joint vocational district. The full time equivalency average daily membership is 8,255 pupils.

The organizational arrangements of the district are traditional in nature but the flexible application of the resources would permit alternative forms of organization appropriate to the needs of a school district's community.

The student body is representative of a wide range of socio-economic status families. The district is designed to address the educational needs of such a mix, including special education programs for children with handicaps. Additional inputs which would be necessary and appropriate, if the district was a high intensity need district, are indicated.

Instructional personnel has been allocated to provide class sizes of 20 pupils in the elementary grades and 25 at the secondary levels. Organization of the teaching personnel will allow smaller class sizes where appropriate to the needs of children and larger class sizes where such numbers are desirable or will have little effect on the quality of the instructional program. Department heads and executive teachers are provided released time to ensure instructional leadership at the local level.

For the purpose of the model, the school buildings are assumed to be in reasonable shape. Unusual capital outlay for construction and unusual transportation costs would represent additional expenditures which are not taken into account by the model.

PLAINTIFFS' EXHIBIT No. 290

Elementary School Specifications

Average Daily Membership (ADM): 600 pupils - 560 FTE
 Grade Levels: Kindergarten through grade six
 Classroom Organization: Self contained classes
 Average Class Size - Regular Classes: 20 pupils
 Pupil/Teacher Ratio: 16:1 (13:1)*

Staff Organization

	<u>Number of Pupils</u>	<u>Number of Staff</u>	<u>Additional Staff for High Intensity Need</u>
Administration -			
Principal		1	--
Secretary		1	--
Clerk Typist		--	(1)
Classroom Teachers -			
Kindergarten	80	2	(.50)
Grade One	80	4	(1)
Grade Two	80	4	(1)
Grade Three	80	4	(1)
Grade Four	80	4	(1)
Grade Five	80	4	(1)
Grade Six	80	4	(1)
Special Education Teachers -			
EMR, Learning and Behavioral Disabilities, and other Special Needs	40	3	(1)
Speech Therapist		.25	(.25)
Educational Service Personnel -			
Art Teacher		1	--
Music Teacher		1	--
Instrumental Music Teacher		.25	--
Physical Education Teacher		1	--
Academically Talented Teacher		1	--
Career Education Teacher		.25	--
Resource Center Librarian		1	--
Nurse		.50	(.50)
Operational Personnel -			
Instructional/Administrative Aides		4	(4)
Cafeteria Personnel		4	(1)
Custodians		3	(2)
Total Personnel by Category for Each Elementary School			
Certificated Personnel			
Administrators	1	--	
Classroom Teachers	26	(6.50)	
Special Education Teachers	3.25	{1.25}	
Educational Service Personnel	6	(.50)	
	<hr/> 36.25	<hr/> (8.25)	
Non-Certificated Personnel			
Secretaries	1	--	
Clerk/Typists	--	(1)	
Aides	4	(4)	
Cafeteria Personnel	4	(1)	
Custodians	3	(2)	
	<hr/> 12	<hr/> (8)	

* Number in parentheses refer to additional staff for high intensity need school

PLAINTIFFS' EXHIBIT No. 290

Junior High School Specifications

Average Daily Membership (ADM): 1000 pupils - 1000 FTE
 Grade Levels: Grades 7 through 9
 Classroom Organization: Teaching Teams of 5 Teachers
 Average Class Size - Regular Classes: 25 pupils
 Pupil/Teacher Ratio: 16:1 (14:1)*

Staff Organization:

	<u>Number of Staff</u>	<u>Additional Staff for High Intensity Need</u>
Administration -		
Principal	1	--
Assistant Principal	1	(1)
Secretary	1	--
Clerk/Registrar	1	--
Clerk/Switchboard/Receptionist	1	--
Clerk/Typist	--	(2)
Guidance -		
Counselors	3	(1)
Clerk/Typists	3	(1)
Classroom Teachers -		
English	7	(1)
Foreign Language	3	--
Mathematics	7	(1)
Reading	7	(1)
Science	7	(1)
Social Science	7	(1)
Home Economics	3	--
Industrial Arts	3	--
Business & Personal Typing	1	--
Special Education Teachers -		
EMR, Learning and Behavioral Disabilities, and other Special Needs	5	(3)
Speech Therapist	.25	(.25)
Educational Service Personnel -		
Art Teacher	3	--
Music Teacher	2	--
Instrumental Music Teacher	2	--
Physical Education/Health Teacher	4	--
Resource Center Librarian	1	--
Nurse	1	--

Operational Personnel -

Instructional/Administrative Aides	2	(2)
Learning Center Aides	2	(2)
Cafeteria Personnel	7	(3)
Custodians	8	(2)

Junior High School Specifications (cont'd.)

Total Personnel by Category for Each Junior High School:

<u>Certificated Personnel</u>	<u>Non-Certificated Personnel</u>	
Administrators	2	(1)
Counselors	3	(1)
Classroom Teachers	45	(5)
Special Education Teachers	5.25	(3.25)
Educational Service Personnel	13	--
	<u>68.25</u>	<u>(10.25)</u>
	<u>Secretaries</u>	<u>1</u>
	<u>Clerk/Typists</u>	<u>4</u>
	<u>Aides</u>	<u>4</u>
	<u>Cafeteria Personnel</u>	<u>7</u>
	<u>Custodians</u>	<u>8</u>
	<u>24</u>	<u>(12)</u>

* Number in parentheses refer to additional staff for high intensity need school.

Senior High School Specifications

<u>Staff Organization</u>	<u>Number of Staff</u>	<u>Additional Staff for High Intensity Need</u>
Administration -		
Principal	1	--
Assistant Principals	2	(1)
Business Manager	1	--
Athletic Director	1	--
Secretary	1	--
Clerk/Registrar	1	--
Clerk/Switchboard/Receptionist	1	--
Clerk/Typists	4	(1)
Guidance -		
Counselors	5	--
Vocational Counselor	--	(1)
Clerk/Typists	4	(1)
Classroom Teachers -		
Business	5	--
Reading	1	(2)
Driver Education	1	--
English	14	(3)
Foreign Language	5	--
Home Economics	4	--
Industrial Arts	4	--
Mathematics	10	(2)
Science	10	--
Social Science	10	--
Art Teachers	3	--
Music Teachers	4	--
Physical Education/Health Teachers	8	--
Special Education Teachers -		
EMR, Learning and Behavioral Disabilities and other Special Needs	4	(1)
Speech Therapist	.5	--
Educational Service Personnel -		
Career Education Teachers	1	--
Resource Center Librarians	3	--
Nurse	1	--
Operational Personnel -		
Instructional and Administrative Aides	6	(2)
Learning Center Aides	2	(2)
Cafeteria Personnel	10	(1)
Custodians	14	(2)

Senior High School Specifications (cont'd.)

Total Personnel by Category for the Senior High School:

	<u>Certificated Personnel</u>	<u>Non-Certificated Personnel</u>
Administrators	5	(1)
Counselors	5	{1}
Classroom Teachers	79	(7)
Special Education Teachers	4.50	(1)
Educational Service Personnel	5	--
	<u>98.50</u>	<u>(10)</u>
	<u>Secretaries</u>	<u>1</u> <u>--</u>
	<u>Clerk/Typists</u>	<u>10</u> <u>(2)</u>
	<u>Aides</u>	<u>3</u> <u>(4)</u>
	<u>Cafeteria Personnel</u>	<u>10</u> <u>(1)</u>
	<u>Custodian</u>	<u>14</u> <u>(2)</u>
	<u>43</u> <u>(9)</u>	

* Number in parentheses refer to additional staff for high intensity need school.

Central Office Specifications

<u>Staff Organization</u>	<u>Number of Staff</u>	<u>Additional Staff for High Intensity Need</u>
Administration -		
Superintendent	1	--
Secretaries	2	--
Clerk-Treasurer	1	--
Assistant Clerk-Treasurer	1	--
Account Clerks	1	--
Bookkeeper	1	--
Curriculum and Instruction -		
Director	1	--
Secretary	1	--
Supervisor, Primary	1	--
Supervisor, Intermediate	1	--
Supervisor, Program Development	1	--
Supervisor, Career Education	1	--
Supervisor, Library Services	1	--
Psychometrist	1	--
Clerk/Typist	5	--
Pupil Personnel -		
Director	1	--
Secretary	1	--
Psychologist	2	(2)
Supervisor, Special Education	1	--
Social Worker/Attendance Officers	1	(1)
Security Officer	1	(1)
Clerk/Typists	3	--
Staff Personnel		
Director	1	--
Secretary	1	--
Manager, Personnel Records	1	--
Business -		
Director	1	--
Assistant Director	1	--
Secretary	1	--
Manager, Data Services	1	--
Manager, Food Services	1	--
Manager, Purchasing	1	--
Manager, Warehouse	1	--
Specialist, Duplicating Services	1	--
Maintenance Personnel	1	--
Custodians	6	--
Account Clerks	4	--
Clerk/Typists	3	--
Clerk/Switchboard/Receptionist	1	--

Central Office Specifications (cont'd.)

Total Personnel by Categories for the Central Office -

	<u>Certificated Personnel</u>	<u>Non-Certificated Personnel</u>
Superintendent	1	2
Directors	5	1 (1)
Supervisors	6	5
Psychologists/Psychometrists	3 (2)	6
Social Worker/Attendance	1 (1)	12
		Account Clerks
		5
		Bookkeeper
		1
		Duplicating Specialist
		1
		Custodian
		1
		Maintenance Personnel
		6 (2)
	<hr/> 16	<hr/> 40
	<hr/> (3)	<hr/> (3)

* Number in parentheses refer to additional staff for high intensity need district.

MODEL SCHOOL DISTRICT

School Personnel Costs

<u>Employee Classification</u>	<u>Average Salaries Reported by OPEC*</u>	<u>Average Salaries Used in Model</u>
Classroom Teachers	\$ 11,561	\$ 13,873
Plant Operation and Maintenance	8,559	10,271
Principals and Assistants	19,115	22,938
Secretarial	6,529	7,835
Guidance Counselors	14,905	17,886
Food Services	3,793	4,557
Superintendents and Assistants	23,791	28,549
Supervisors	17,791	21,349
Teacher Aides	3,802	4,562
Librarians	11,605	13,926
Psychologists	15,069	18,083
Speech Therapists	10,401	12,481
Health	9,847	11,816
Other	11,711	14,053

* OPEC is the Ohio Public Expenditure Council

Personnel costs for the model represent 20% increase over state-wide averages published by OPEC on April, 1976.

MODEL SCHOOL DISTRICT

Basic District

<u>Category</u>	<u>Total Expenditures</u>	<u>Per Pupil</u>	<u>% of Total Current Expenditures</u>
ADMINISTRATION	\$ 629,986	\$ 76.32	4.73
Professional Salaries	332,822	40.32	2.50
Sec. and Clerical Salaries	195,875	23.73	1.47
All Other Expenditures	101,289	12.27	0.76
INSTRUCTION	8,549,975	1035.73	64.15
Classroom Teachers	6,617,421	801.63	49.65
Other Professionals	887,959	107.57	6.66
Sec. Clerical and Aide Salaries	446,191	54.05	3.35
Textbooks	118,615	14.37	0.89
School Library Materials	49,312	5.97	0.37
Audio Visual Materials	21,324	2.58	0.16
Teaching Supplies	213,240	25.83	1.60
Other Instructional Expenses	195,913	23.73	1.47
FOOD SERVICES	254,912	30.38	1.91
ATTENDANCE SERVICES	18,803	2.28	0.14
HEALTH SERVICES	90,627	10.98	0.68
Professional Salaries	82,712	10.02	0.62
PLANT OPERATIONS	1,367,399	165.64	10.26
Salaries	564,905	68.43	4.24
Heat for Buildings	194,581	23.57	1.46
Utilities Other Than Heat	317,194	38.42	2.38
PLANT MAINTENANCE	303,866	36.81	2.28
Salaries	61,626	7.47	0.46
FIXED CHARGES	1,959,139	237.33	14.70
Employee Benefits	1,673,931	202.78	12.56
ALL OTHER NET CURRENT EXPENSES	152,766	18.51	1.15
TOTAL NET CURRENT EXPENDITURES	13,327,473	1614.47	100.00
TRANSPORTATION	502,446	60.87	3.77
CURRENT CAPITAL OUTLAY	274,546	33.26	2.06
DEBT SERVICE	469,127	56.83	3.52
GRAND TOTAL EXPENDITURES	\$ 14,573,592	\$ 1765.43	109.35

National Comparison Local School Costs for the 1976-77 School Year, published by Market Data Retrieval was utilized to determine percentages of expenditures in some categories.

MODEL SCHOOL DISTRICT

High Intensity Need District

<u>Category</u>	<u>Total Expenditures</u>	<u>Per Pupil</u>	<u>% of Total Current Expenditures</u>
ADMINISTRATION	\$ 644,039	\$ 78.01	4.08
Professional Salaries	346,875	42.02	2.20
Sec. and Clerical Salaries	195,875	23.73	1.24
All Other Expenditures	101,289	12.27	0.64
INSTRUCTION	10,252,799	1242.01	65.00
Classroom Teachers	7,817,436	946.99	49.56
Other Professionals	1,064,680	128.97	6.75
Sec. Clerical and Aide Salaries	772,279	93.55	4.90
Textbooks	118,615	14.37	0.75
School Library Materials	49,312	5.97	0.31
Audio Visual Materials	21,324	2.58	0.14
Teaching Supplies	213,240	25.83	1.35
Other Instructional Expenses	195,913	23.73	1.24
FOOD SERVICES	323,192	39.15	2.05
ATTENDANCE SERVICES	18,803	2.28	0.12
HEALTH SERVICES	137,891	16.70	0.87
Professional Salaries	129,976	15.75	0.82
PLANT OPERATIONS	1,593,361	193.02	10.10
Salaries	790,867	95.30	5.01
Heat for Buildings	194,581	23.57	1.23
Utilities Other Than Heat	317,194	38.42	2.01
PLANT MAINTENANCE	324,408	39.30	2.06
Salaries	82,168	9.95	0.52
FIXED CHARGES	2,326,887	281.88	14.75
Employee Benefits	2,041,679	247.32	12.94
ALL OTHER NET CURRENT EXPENSES	152,766	18.51	0.97
TOTAL NET CURRENT EXPENDITURES	15,774,146	1910.86	100.00
TRANSPORTATION	502,446	60.87	3.19
CURRENT CAPITAL OUTLAY	274,546	33.26	1.74
DEBT SERVICE	469,127	56.83	2.97
GRAND TOTAL EXPENDITURES	\$ 17,020,265	\$ 2061.81	107.90

National Comparison Local School Costs for the 1976-77 School Year, published by Market Data Retrieval was utilized to determine percentages of expenditures in some categories.

XI. A FAR MORE DOMINANT ROLE BY THE STATE IN THE FINANCING OF PUBLIC EDUCATION WOULD PROVIDE DISTRICT BOARDS OF EDUCATION WITH A GREATER DEGREE OF CONTROL OVER EDUCATIONAL DECISIONS THAN THEY NOW HAVE

(1) The Court finds from the testimony of numerous superintendents and board members that under the present system of financing public education, the only boards of education in Ohio which have any degree of local control over educational decisions are those boards in a few well-financed districts. In the great majority of school districts, financial constraints and legal mandates have limited school board options and have very severely curtailed the power of boards of education to make important educational decisions. Martin Essex conceded that the Board of Education in a well-financed school district has many more educational options than does the board of education in a poorly-financed school district. (Tr. 375). Dr. Jay Moskowitz also noted that ". . . local control only exists for those who have the dollars and wealth to exercise that . . ." — specifically, districts with the highest median family incomes and subsequent high millage rates. (Tr. 3327).

(1.1) Cincinnati Board of Education President Henry Kasson stated, "My opinion is that control at the local level has been vested from the local entity and now effectively resides in the state". (Tr. 1942). Mr. Kasson went on to state:

I have taken state control as given at this point. My objective for the school system now is to say all right, if the state is going to control education locally and if that decision has been made, and I assume that the state has that right, it ought to be equally the state's responsibility to provide adequate funding for the decisions that are being made.

(Tr. 1943).

Cincinnati Board member Robert Braddock stated, "Money is the root factor as to how well you can control education in Cincinnati . . . I don't think we have control over it because we don't have the money to do the things that are needed within the school district. (Tr. 2307-08).

(1.2) Toledo Superintendent Frank Dick stated that some of the provisions of Am. Sub. S.B. 170 have accentuated the erosion of local control into a landslide loss of the ability to make meaningful decisions at the local level. Decisions historically made at the local level are now being mandated by the state, i.e. number of people employed, salary schedules, class size. (Tr. 561). Other superintendents testified similarly. (Tr. 923, 997, 1053).

(2) The Court also finds that there is no reason to conclude that a more dominant role by the state in the financing of public education would further curtail control of educational decisions by boards of education. To the contrary, the Court believes that if the state were to provide the funds to ensure that the districts have sufficient resources to provide high quality educational programs, local control of education would be enhanced. Professor Walter Hack stated that opinion (Tr. 4562), as did Professor Norman Thomas (Tr. 3627), Professor Roe L. Johns (Tr. 4322), Professor Robert Wessel (Tr. 3236) and Professor David Wiles (Tr. 4062). Indeed, Martin Essex stated that he does not believe that a substantially greater role by the state in the financing of education would result in any lessening of control by the local boards of education. (Tr. 375).

XII. THE PROVISION OF AN EDUCATION OF HIGH QUALITY TO OHIO'S YOUTH IS OF PARAMOUNT IMPORTANCE TO THE CITIZENS OF OHIO

(1) The plaintiffs showed that the educational deprivation which has resulted from the General Assembly's default in the financing of public education very seriously jeopardizes the public interest as well as the interests of the affected pupils. William A. Harrison stated that "not only do school children benefit from a public education system, the entire society are beneficiaries of a good educational system, and . . . I think its not at all a private good but rather a public good that's provided through this kind of a system." (Tr. 4791). He also stated that "education is a particularly intimate kind of governmental service. It affects almost everybody, and it affects them in a very intimate way. How we learn to think, how we learn to view ourselves, and all people are concerned about that." (Tr. 4794). Thus, the educational deprivation which now exists in Ohio has enormous potential for long range societal harm.

(2) The plaintiffs also proved that there is a strong relationship between the degree of education that a person receives and the extent of his lifetime participation in the political process. (Tr. 3592).

(3) Public schools prepare students for citizenship in the following ways:

(3.1) They guide students in developing a set of supportive attitudes toward government;

(3.2) They provide students with substantive knowledge about politics;

(3.3) They impart a civic education and indoctrination concerning the political system;

(3.4) They provide students with an authority model (Tr. 3593-94).

(4) The public schools carry out this process, which is called political socialization, through various means such as curriculum, classroom ritual life, examples set by teachers, providing opportunities for student participation in extra-curricular activities, and also by instilling in students a set of general consensus values which are broadly supportive of certain democratic norms and ideals such as majority rule and respect for the rights of minorities. (Tr. 3594-95).

(5) Professor Norman Thomas⁴⁶ testified that in order for an educational system to achieve the objective of developing supportive attitudes toward government, the following full range of services and personnel are necessary:

(5.1) An adequate number of well-qualified, professional and competent teachers, counselors and other supporting personnel;

(5.2) A fully developed curriculum containing not only required courses such as American history, civics etc. but also courses in other social sciences such as economics, sociology, psychology and American literature;

(5.3) A substantial variety and range of extra-curricular activities;

(5.4) A possibility of participation in a number of school-related organizations in which the students may engage in the process of making decisions for themselves through democratic procedures.

(6) The Court finds that because of severe financial shortages existing in the great majority of school districts in this state, the public school system is generally failing to provide to students the educational experiences necessary to give them the degree of political socialization which they require,

⁴⁶ Norman Thomas is a professor of Political Science at the University of Cincinnati and holds a Doctor of Philosophy Degree from Princeton University. One of Dr. Thomas' areas of specialization is the Politics of Education.

and that such failure imperils not only the students' potential for effective citizenship but also the political health of the state. This failure is particularly acute in the inner-city districts which are endeavoring to educate large numbers of children whose home environments do not provide adequate political socialization experiences.

CONCLUSIONS OF LAW

Procedural Issues

I. STANDING OF PLAINTIFFS

On the first day of the trial the defendants moved to dismiss the claims of the plaintiff class of boards of education on the ground that, as creatures of the state, they may not sue to invalidate state statutes. The Court overruled that motion and comes now to deal with the issue of the standing of these plaintiffs as part of its findings of fact and conclusions of law.

First, it is well settled that, in asserting the rights of the school children it has the duty to educate, the board stands in the relationship of *loco parentis* to those children. The standing of a school board to maintain litigation to protect the legal and constitutional rights of the children attending its schools is established by settled law. See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Akron Board of Education v. State Board of Education*, 490 F.2d 1285 (6th Cir. 1974); *Brewer v. Hoxie School District*, 238 F.2d 91 (8th Cir. 1956); *Smith v. Board of Education of Morristown School District*, 365 F.2d 770 (8th Cir. 1966); *Park View Heights Corporation v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972).

Second, it is clear also that the boards of education, board members and board-employed administrators have standing to maintain this action to vindicate and protect rights and duties which inure to them.

The Board of Education of the Cincinnati School District and its members have standing to maintain this action under the rule stated by the United States Supreme Court in *Board of Education of Central School District No. 1 v. Allen*, 20 N.Y.2d 109, 228 N.E.2d 791 (1967), *aff'd*, 392 U.S. 236 (1968). There, as here, a board of education and its members challenged the constitutionality of a state statute. The United States Supreme Court noted that:

Appellants have taken an oath to support the United States Constitution. Believing [the state statute] to be unconstitutional, they are in the position of having to choose between violating their oath and taking a step — refusal to comply with [the state statute] that would be likely to bring their expulsion from office and also a reduction in state funds for their school districts. There can be no doubt that appellants thus have a "personal stake in the outcome" of this litigation. *Baker v. Carr*, 369 U.S. 186, 204, 7 L.Ed.2d 663, 678, 82 S.Ct. 691 (1962) *id.* 392 U.S. 241, ft. 5

That the president and members of the Cincinnati School Board, the superintendent of schools and the clerk-treasurer all come within the test outlined in *Allen, supra*, is clear. Pursuant to Article XV, § 7 of the Ohio Constitution, each of the above-named parties must swear to uphold the Ohio Constitution:

Every person chosen or appointed to any office under this State, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of the State, and also an oath of office. Article XV, § 7, Ohio Constitution.

Further, Ohio Revised Code § 3313.10 provides in relevant part:

Before entering upon the duties of his office each person elected or appointed a member of a board of education shall take an oath to support the constitution

of the United States and the constitution of this state and that he will perform faithfully the duties of his office

Therefore, all of the members of boards of education in Ohio have sworn to uphold the Ohio Constitution, specifically Article I, § 2, which states that "The General Assembly shall make such provision . . . as will secure a thorough and efficient system of common schools throughout the state", and Article VI, § 3, which states that "Provision shall be made by law for the organization, administration and control of the public school system supported by public funds"

The parties whose standing is challenged assert that the system now in effect — within which they carry out their official duties — violates the constitutional rights of the school children in this state and school district. Accordingly, they assert that to continue to administer education to the children of this district without challenging the constitutionality of that system would not only be to participate in the violation of the rights of those children, but it would also be to violate their oaths of office. As in the case of the plaintiffs in *Allen, supra*, these parties have a "personal stake in the outcome" of this litigation.

Inasmuch as the members of the Cincinnati Board of Education act formally and officially through the Board of Education itself in all matters, it is appropriate that they assert the constitutional claims in this case, not only as individuals but also by and through the Board of Education. Ohio Revised Code § 3313.17 empowers a school board to bring an action such as this:

This board of education of each school district shall be a body politic and corporate, and as such, capable of suing and being sued

This statute specifically invests the Cincinnati School board with the power to bring this suit. If the General Assembly

had intended to limit the power of the plaintiff school district in the manner in which the defendants seek to limit it, the Legislature would have placed appropriate words of limitation in the statute.

The Cincinnati Board of Education has standing to maintain this action because the Cincinnati school district is designated beneficiary of the statute whose constitutionality it challenges. The general test for standing, enunciated by the United States Supreme Court in *Association of Data Processing Service Organization v. Camp*, 397 U.S. 150 (1970), is whether the challenged action has caused the plaintiff injury in fact and "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." The Cincinnati School district and all other school districts which comprise the members of this certified class are identified by O.R.C. § 3317.01 as the specific recipients of the state aid which is distributed through the school foundation formula. That the designated beneficiary is a proper party to complain in this action is clear under the test outlined by the United States Supreme Court.

It is particularly instructive on the issue of the Board's standing to maintain this action to recognize the content of the resolution which the Board adopted the day this action was instituted, which states clearly the Board's vital interest in vindicating the constitutional rights herein asserted. That resolution (Defendants' Exh. VI H-1) provides in part:

. . . the Cincinnati School District faces a financial crisis because it lacks the funds to provide the school children in this district a thorough and efficient education as mandated by the Ohio Constitution; and . . .

under the present system of public financing adopted by the 111th General Assembly, this school district and many other school districts similarly situated have been, and will continue to be, financially deprived, and . . .

this school district is unable to remedy such deprivation by legislative means, and, thus, has no recourse except that of instituting litigation . . .

The Complaint (paragraphs 7 and 8) specifically refers to the Board of Education of the Cincinnati School District and its direct interest in this suit:

(8.) The system for financing common or public schools in Ohio which has been fashioned by the General Assembly fails to meet the standards established in the constitutional provisions referred to in paragraph 5. The existing statutory system of public school finance places upon each school district in Ohio the burden of raising an excessive portion of the current operating funds required to meet the above stated constitutional mandates and statutory duties, through the levy of a tax upon property located in that district. The School Foundation Program established in Chapter 3317, Ohio Revised Code, supplements the funds which each local school district is able to raise in that manner with money derived from other revenue sources on a statewide basis. The board of education of each school district is largely dependent upon the funds raised from these two sources to meet the cost of educating children attending the public schools therein, and *such sources are inadequate to enable the Board of Education for the Cincinnati School District and the boards of education for similarly situated school districts to comply with the requirements imposed by provisions of the Ohio Constitution referred to in paragraph 5, and the provisions of the Revised Code referred to in paragraphs 6 and 7.*
(emphasis provided)

Further, at paragraph 14 of the Complaint, the plaintiff Cincinnati School District states:

Thus, the public school financing system in Ohio leaves local boards of education without the means to provide the students under their charge the education to which those students are constitutionally entitled.

It is important also to note that in other school finance litigation in the country school districts have been named plaintiffs in the actions. e.g., *Northside School District No. 471, et al. v. Kinnear*, 530 P.2d 178, 180 (S.Ct. Wash. 1974); *Board of Education, Levittown Union Free School District, Nassau County, et al. v. Nyquist*, Index No. 8208/74 (S.Ct., Nassau County, filed 1974); *Benson v. State of Missouri*, No. 27911 (Cir. Ct., Cole County, filed 1975); *Seattle School District No. 1 of King County, Washington v. State of Washington*, No. 44054 (S.Ct. Washington, filed 1975); *Olsen v. State of Oregon*, (S.Ct. Oregon, filed 1976).

Further, the standing of the named public officials is clear from *City of New York v. Richardson*, 473 F.2d 923 (2d Cir. 1973), and the subsequent decision in *Lindsay v. Wyman*, 372 F.Supp. 1360 (S.D.N.Y. 1974), in which public officials were explicitly permitted to challenge the constitutionality of the state's method of apportioning welfare costs between itself and localities. In several recent New York cases, cities and public officials in their governmental capacity have been held to have standing to test the constitutionality of state statutes, e.g., *Graves v. Lombardi*, 335 N.Y.S.2d 189, 70 Misc. 2d 1053 (1972) (city officials could test constitutionality of state law which would permit violation of local zoning ordinances that they had statutory duty to enforce); *Town of Black Brook v. State of New York*, 376 N.Y.S. 2d 15, 49 App. Div. 417 (3d Dept. 1975).

In summary, it is the considered judgment of this Court that all of the plaintiff classes have standing to maintain this lawsuit.

II. CLASS ACTION ORDER

On May 9, 1977, after the plaintiffs' case in chief was concluded, the plaintiffs filed a proposed amended class action order pursuant to Civil Rule 23(C)(1) which provides that "An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits". The Court believes that the adoption of such an amended and final order will satisfy the requirement of Civil Rule 23(C)(3) that "the judgment in an action maintained as a class action under subdivision (B)(1) or (B)(2), . . . shall include and describe those whom the court finds to be members of the class".

Now that all of the evidence in the case has been presented, the Court is able to determine finally that this case, being an action for declaratory and injunctive relief, is properly maintainable as a class action. The plaintiffs have demonstrated that, with respect to all of the classes, (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law and fact common to the class, (3) the claims of the representative parties are typical of the claims of the class, and (4) the representative parties will fairly and adequately protect the interests of the class, all as required by Rule 23(A). The plaintiffs have demonstrated, moreover, that the parties opposing the classes have acted and refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive or declaratory relief with respect to the classes as a whole, as provided in Rule 23(B)(2). Thus, this Court's preliminary order certifying this as an action maintainable under Rule 23(B)(1)(b) is modified to the extent that the Court now determines that the action properly falls within Rule 23(B)(2).

Thus, the Court has determined that this is a proper class action under Civil Rules 23(A) and 23(B)(2); that the action should be prosecuted as such and the members of the class are determined by the Court to be as follow:

A. The school districts which comprise the plaintiff class of school districts include each school district which is similarly situated to the Cincinnati City School District in its financial inability to deliver to the school children it has the duty to educate that level and quality of educational opportunity which is mandated by Article VI, Section 2, and Article I, Section 2 of the Ohio Constitution.

The disparities in the level and quality of the educational programs provided by the school districts in Ohio are a function of the total number of state and local dollars per pupil which each district has available, the cost of purchasing educational services, and the varying needs of the students.

The Court finds from the evidence that, bearing those considerations in mind, there is a direct relationship between the number of dollars per pupil which a school district receives from the state and local sources and the level and quality of educational opportunity which that district is able to provide to its students. The Court also finds that certain districts in this state, principally the large urban districts, must serve more pupils having special educational needs than most other districts, and that the costs of providing education are higher in certain districts than they are in other districts.

The Court finds further that the best estimate made by numerous school superintendents and other qualified educators is that at the present time a district must have in excess of \$1700.00 per pupil from state and local revenue sources in order to provide a high quality educational program to its students and that a high intensity need or high cost district needs in excess of \$2000 per pupil in order to provide a high quality educational program.

Because of the multiplicity of factors which bear upon the ability of a district to provide the level and quality of educational opportunity which the Ohio Constitution requires, it is impossible to draw a precise line separating the districts in this state which are situated similarly to the Cincinnati District in inability to provide a constitutionally acceptable level

and quality of education from those which are not similarly situated. It is clear from the evidence, however, that all but a small percentage of the school districts in Ohio are financially unable to provide a constitutionally acceptable level of education at the present time.

Moreover, it is necessary that the class considerations in this litigation remain open-ended. It is obvious that any line drawn now for the purpose of excluding any school districts from the plaintiff class would doubtless have to be modified in future years. Thus, it is inappropriate to define the plaintiff class of school districts with more specificity than stated above.

Recognizing also that the nature of the relief requested in this case is declaratory and injunctive in nature and that this is a class action brought under the provisions of Rule 23(B)(2), it is not necessary that the Court be more definite than this in defining the plaintiff class.

B. The members of the boards of education who comprise the plaintiff class are those members of the boards of education for those school districts which are similarly situated to the Cincinnati City School District as that is defined in paragraph A of this order;

C. The school administrators who comprise the plaintiff class are those administrators employed by those school districts which are similarly situated to the Cincinnati City School district as that is defined in paragraph A of this order;

D. The students who comprise the plaintiff class are those students who reside in those school districts and attend the public schools operated by those school districts which are similarly situated to the Cincinnati City School District as that is defined in paragraph A of this order;

E. The parents who comprise the plaintiff class are the parents of those students who are identified in paragraph D of this order;

F. The class of property owners consists of all of the owners of real property and tangible personal property used in business in this state who pay a disproportionately high share of the cost of providing elementary and secondary education or who must tax themselves at a substantially higher rate than do the property owners in other school districts in order to provide a commensurate level of education to the children in their school districts. Under present conditions only the owners of taxable property which is located in those districts where funds sufficient to provide a high quality education are generated from property taxation alone with a levy of 20 mills or less for schools would appear to be excluded from the class.

Inasmuch as, under the present system for financing public elementary and secondary education which relies predominantly upon property taxation, the conditions which directly influence the burden which is thrust upon property owners for the support of education vary from time to time because of increases and decreases in the property tax bases among the school districts and because of assessment disparities and other inequities among the school districts and inasmuch as the classes of plaintiffs must remain open-ended, it is not feasible to exclude any person or firm who owns property taxed for the support of education in this state from the taxpayer class. Therefore that class shall be described as all of the owners of real property and personal property used in business which is located in Ohio.

Substantive Issues

I. GENERAL CONCLUSIONS

(1) The Court judicially notices that after the trial of this case had been in progress for eight months, the General Assembly passed Amended Substitute Senate Bill 221 (Am. Sub. SB 221), effective November 23, 1977. This act modifies the school financing statutes very slightly by amending and supplanting certain provisions which were contained in Am. Sub. SB 170. But it fails to alter the statutory scheme which is the subject of this case and which continues in effect the state aid formula contained in O.R.C. § 3317.022 and other provisions of the law which the Court holds unconstitutional.

(2) The plaintiffs allege that the system now in effect for financing public elementary and secondary education, including certain statutes which are included in Chapter 3317 O.R.C., called the School Foundation Law, is violative of four separate provisions of the Ohio Constitution: Article VI, §§ 2 and 3, Article I, § 2, and Article II, § 26. The claim that the system violates the last mentioned provision, which states that "All laws, of a general nature, shall have uniform operation throughout the state" has not been pressed and thus the Court reaches no conclusion as to the merits of that claim. Nor is there any reason to consider whether the system is violative of Article VI, § 3, which states that "Provision shall be made by law for the organization, administration and control of the public school system of the state supported with public funds" since the claim that the system violates that section has not been developed.

(3) The plaintiffs' principal contentions, which have been vigorously asserted, are that the system is in violation of both Article VI, § 2, which states that "The General Assembly shall make such provision, by taxation or otherwise, as will secure a thorough and efficient system of common schools throughout the state.", and Article I, § 2, which states that

"All political power is inherent in the people. Government is instituted for their equal protection and benefit."

(4) The Court concludes from an examination of all of the evidence and from an analysis of the historic, evolving and current meaning of both Article VI, § 2 and Article I, § 2 of the Ohio Constitution that the entire system now in effect under which the General Assembly has provided for the financing of public elementary and secondary education in this state, including those certain sections of Chapter 3317 O.R.C. and its enabling legislation, discussed *infra*, which establish the state aid formula for school districts, which enact mandates and penalties and which authorize save-harmless payments, violate the thorough and efficient clause of Article VI, § 2 and the equal protection clause of Article I, § 2 of the Ohio Constitution. The grounds for both of those conclusions are set forth hereinafter in detail.

(5) The Court's conclusion that the entire educational financing system is unconstitutional does not imply that the court has reached any conclusion concerning the constitutionality of any of the laws relating to property taxation generally, which play certain parts in the overall statutory scheme for financing elementary and secondary education and, in so doing, interact, directly and indirectly, with the statutes which the Court does hold unconstitutional. This case concerns education, not the fairness of the property tax of this state generally.

Nor does the Court, in this consideration of the constitutionality of certain specific sections of Chapter 3317 O.R.C., reach any conclusion concerning the validity of those sections of the School Foundation Law which are not the subject of any specific holding.

(6) The Court concludes that the plaintiffs have proved with clear and convincing evidence that the statutory system which the General Assembly has established for financing public elementary and secondary education is depriving the members of the plaintiff class of school children of the rights con-

ferred upon them by Article VI, § 2 and Article I, § 2 of the Ohio Constitution, a claim which they have asserted by and through their parents.

(7) The Court also concludes that the statutory scheme is interfering with and impairing the discharge of the oaths taken by members of the plaintiff class of school board members under Article XV, § 7 of the Ohio Constitution and O.R.C. § 3313.10 to support the constitution of this state and to perform faithfully their duties, and the discharge by such school board members of the duties imposed upon them by O.R.C. § 3313.47 to manage and control all public schools and by O.R.C. § 3313.48 to provide for the free education of the youth of school age within each district, and that it is interfering with the discharge by the members of the plaintiff class of school district administrators of their duties provided by law.

(8) The Court concludes that the plaintiffs have proved with clear and convincing evidence that the members of the plaintiff classes of school children, school board members and school district administrators are sustaining substantial and irreparable harm through the operation of the present statutory scheme for financing elementary and secondary education and that they have no adequate remedy at law.

(9) The Court also concludes, however, that the plaintiffs have not shown that the statutory system has caused the members of the property owners class to suffer harm to any legally protected interest. Even though the evidence shows that property owners, as property taxpayers throughout the school districts, are affected unequally by the system, that inequality does not appear to represent a violation of any duty arising under the Constitution of Ohio or the Revised Code.

(10) The evidence shows that a mill raises substantially more educational dollars in certain school districts than it raises in other districts and that, indeed, the taxpayers who

pay taxes on property located in districts wherein it is necessary to levy more than 20 mills in order to provide an education of high quality appear to be bearing a disproportionately heavy burden for public education. The evidence also shows that property taxpayers in certain districts are so overburdened by non-educational governmental costs that they are unable to withstand the financial strain of supporting educational costs to the extent that educational interests require. Those evidentiary showings demonstrate the reasons why the system is unfair to school children but they do not demonstrate a violation of the legal rights of taxpayers.

(11) This case concerns educational rights, not taxpayer equity, and the Court does not conclude that the plaintiffs have shown that any persons *as taxpayers* are suffering any legal harm by reason of the state's school financing statutes. Indeed, the Court has concluded that the General Assembly's apparent preoccupation with a measure of taxpayer equity at the sacrifice of educational interests, specifically as evidenced by the "reward for effort" provision contained in O.R.C. § 3317.022(A), represents the subordination of constitutional rights to political policy considerations. Thus, even though, for Rule 23 purposes, the Court certified the class of property owners as definable, the Court concludes that the plaintiffs have not sustained the burden of proving any claim on behalf of that class.

II. SPECIFIC CONCLUSIONS

(A) Violations Of Article VI, Section 2 of the Ohio Constitution

(1) The command of Article VI, Section 2 of the Ohio Constitution is clear and unambiguous. The General Assembly is directed to "make such provision . . . as will secure a thorough and efficient system of common schools throughout the state." Article VI, § 2 thus creates a constitutional right which inures to the school age children resident in Ohio to receive the benefits of a thorough and efficient system of public schools. This right belongs to every school age child in Ohio regardless of where in the state he resides. The responsibility to accord school children that right devolves upon the General Assembly itself by the force of the Constitution's command, and not upon the school districts, which are creatures of the General Assembly.

(2) Thus, the inability of a school district to secure sufficient revenue from property taxation to finance a thorough and efficient school system imposes upon the state the duty to provide such additional funds as are necessary to make the school system in that district thorough and efficient. Since the duty to make provision for a thorough and efficient system is the state's duty, the failure of the school district to carry out that function is a failure of the state, itself, to carry out the command of its Constitution.

(3) The principles of constitutional law propounded above mean that the state may not constitutionally delegate the responsibility for financing education to the school districts unless those school districts have the financial resources to carry out that responsibility. The system of educational financing presently in effect in Ohio, under which the responsibility for raising the predominant revenue for financing the public school system is delegated to the school districts, does not fulfill the thorough and efficient mandate of the Constitu-

tution so long as any school district is not able to raise sufficient revenue through property taxation to operate a thorough and efficient school system for children the state has the responsibility to educate. The existence of that condition places the state system which causes it to exist in violation of the thorough and efficient clause of Article VI, § 2.

(4) An examination of the origins of that constitutional provision demonstrates that its framers intended the General Assembly's obligation in the matter of public education to be greater than simply providing a free public education of minimal quality.

(4.1) The earliest documentary support for the provision of free education for the inhabitants of Ohio appears in the Northwest Ordinance, also known as the Ordinance of 1787, which was the basis for the admission of Ohio into the Union in 1803. In that document Congress provided:

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged.

(4.2) Carrying forward the spirit of the Northwest Ordinance, Ohio's first Constitution, adopted in 1802, provided:

. . . no law shall be passed to prevent the poor in the several counties and townships within this state from an equal participation in the schools, academies, colleges and universities within this state, which are endowed, in whole or in part, from the revenue rising from donations made by the United States, for the support of schools and colleges; and the doors of the said schools, academies and universities shall be opened for the reception of scholars, students and teachers, of every grade without any distinction or preference whatever, contrary to the intent for which said donations were made.

(4.3) When the Ohio Constitution was revised in 1851, the drafters of that document were persuaded that during the

first fifty years of the state's life the General Assembly had not done as much to provide for and finance public education as the public interest required.⁴⁷ In the belief that a higher constitutional standard for education was needed, they incorporated in the Constitution the provision known as the thorough and efficient clause.

(4.4) A review of the debates on the recommendations of the committee on education of the 1851 Constitutional Convention discloses that the delegates to that Convention held a conviction that the Constitution should hold the General Assembly to the highest feasible standard of accountability in the financing of public education. Representative of the sentiment of the drafters of the 1851 Constitution that Ohio's organic law should require that the General Assembly make provision for the finest educational opportunities possible for the children of Ohio is the sentiment expressed by delegate Curry that, "The great object to be attained is a system of education, general and complete, which shall extend its advantages to all the children of the State, and afford to each an opportunity to secure all the benefits which it affords." Ohio Constitution Debates of 1851, Vol. II, 710, Tuesday, February 25. Typical of the expressions of other delegates are the following: "Every citizen . . . will have a right to participate in the means of education." *Id.*, 17, Thursday, December 5. "The object sought to be attained is the establishment of a permanent and efficient system of education in the State." *Id.*, 15, Thursday, December 5.

(4.5) The public school support clause in § 3 of Article VI was included in the Constitution in 1912. The debates in the Constitutional Convention of that year demonstrate that the support clause was designed to dovetail with the thorough and efficient clause in such a manner as to vest in

⁴⁷ "Our system of common schools, instead of improving in legislative hands, has been degenerating." Ohio Constitutional Debates of 1851, Vol. II, 702, Monday, February 24.

the General Assembly the complete control over the state public school system which it had the pre-existing duty to finance. Before 1912 there was "doubt whether the legislature [had] complete control over the educational system of the state [which the delegates desired] it should have." The authors of the 1912 Constitution "wanted the whole matter of education to be under the direction and charge of the state." Ohio Constitution Debates of 1912, Vol. II, 1917, May 29, 1912. The system is supposed to be a "unified public school system of the state." *Id.* 1929, May 29, 1912.

(5) It is clear from a review of the debates at the 1851 Constitutional Convention that the 1851 Constitution charged the General Assembly with the duty to do more in the field of public education than establish a minimally acceptable system of public schools; that Constitution commanded the General Assembly to establish and finance an educational system which was general, complete, permanent and efficient. That command has remained with the General Assembly for one hundred twenty-six years. It is clear, also, that since 1912 the General Assembly has enjoyed the complete control over the public school system and had been under the constitutional duty to operate it as a unified system on a statewide basis.

(6) In 1923 the Supreme Court of Ohio, in sustaining the validity of a statute authorizing funds raised by property taxation within one school district to be used to finance schools in other school districts within the county, explained the significance of the thorough and efficient clause, and expatiated upon the criteria which that provision lays down for evaluating the constitutionality of educational finance legislation in Ohio:

Section 2, Article VI of the Ohio Constitution, provides as follows:

"The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising

from the school trust funds, *will secure a thorough and efficient system of common schools throughout the state.*
" "

This declaration is made by the people of the state. It calls for the upbuilding of a system of schools throughout the state, and the attainment of efficiency and thoroughness in that system is thus expressly made a purpose, not local, not municipal, but state-wide.

With this very state purpose in view, regarding the problem as a state-wide problem, the sovereign people made it mandatory upon the General Assembly to secure not merely a system of common schools, but a system thorough and efficient throughout the state.

A thorough system could not mean one in which part or any number of the school districts of the state were starved for funds. An efficient system could not mean one in which part or any number of the school districts of the state lacked teachers, buildings, or equipment.

In the attainment of the purpose of establishing an efficient and thorough system of schools throughout the state it was easily conceivable that the greatest expense might arise in the poorest districts; that portions of great cities, teeming with life, would be able to contribute relatively little in taxes for the support of schools, which are the main hope for enlightening these districts, while districts under-populated with children might represent such taxation value that their school needs would be relatively over supplied. *Miller v. Korns*, 107 Ohio St. 287 (1923) at 297-8.

Consistent with *Miller v. Korns*, Judge Stewart, writing for the same Court, said, in a 1947 opinion, "The finest possible public school system has been one of the primary objectives of Ohio from its very beginning . . . [the] welfare and training [of the youth] for future citizenship in a free government are the paramount purposes of public schools." *Powell v. Young*, 148 Ohio St. 342 (1947) at 358-359.

(7) Thus, the Supreme Court reads the Ohio Constitution as holding the General Assembly to a high standard of accountability in the provision it makes for financing public elementary and secondary education. That responsibility is unmistakeably that of the General Assembly. In discharging it, the Legislature's concern must be statewide, not local. The General Assembly must upbuild a system of schools throughout the state. It must attain thoroughness and efficiency in that system. The constitutional standard is not met if any number of school districts are starved for funds, or lack teachers, buildings, or equipment. Moreover, the General Assembly must anticipate that the greatest expense may arise in the poorest districts, presumably in the cities, and must allocate resources to meet those expenses. Above all, our state has a commitment not merely to provide minimal educational opportunities, but to maintain the finest public school system possible in order to train youth for future citizenship in a free government.

(8) In determining the meaning of Ohio's thorough and efficient clause, the Court has the benefit of the construction which the New Jersey Supreme Court has placed upon the identical provision in the New Jersey Constitution. That construction emanates from litigation in which the New Jersey Supreme Court declared that state's system of financing public elementary and secondary education unconstitutional. *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273 (1973); 67 N.J. 333, 339 A.2d 193 (1975) (second opinion).

(8.1) The court construed New Jersey's thorough and efficient clause to command that the state afford an equal educational opportunity for children, and affirmed the trial court's determination that because of gross discrepancies in dollar input per pupil the constitutional demand had not been met. The *Robinson* court considered the principal cause of the constitutional deficiency to be the legislative scheme's substantial reliance upon local taxation, entailing "discordant correlations between the educational needs of the school districts

and their respective tax bases" 62 N.J. at 520, 303 A.2d at 297. The rationale underlying the New Jersey Supreme Court's opinion was that the right of children to a thoroughly and efficiently financed system of education is an implicit guarantee of that state's constitution.

Specifically, the New Jersey Supreme Court found that:

[T]here [was] a disparity in the number of dollars spent per pupil, depending upon the district of residence . . . [t]he amount of taxable real property within a district [was] not related to the number of students within it. Although there [was] no statutory maximum upon the local tax for current educational expenses, there [were] practical limitations arising from the demands for other local services upon the same tax base. 303 A.2d at 276-7.

The court also found that it was clear that state aid did not operate substantially to equalize the sums available per pupil. *Id.* And it stated in conclusory terms that "the quality of educational opportunity does depend in substantial measure upon the number of dollars invested." *Id.*

(8.2) The principal significance of the *Robinson* opinion lies in the fact that it is the only case in which the court of last resort of any state has measured the constitutionality of an educational financing system similar to Ohio's against a constitutional provision identical to that which is contained in the Ohio Constitution. In so doing, the New Jersey Supreme Court read the thorough and efficient clause of the New Jersey Constitution as requiring something more than the provision of simply an adequate or minimal education. The trial court defined the word "thorough" as "connoting [in] common meaning the concept of completeness and attention to detail. It means more than simply adequate or minimal." 287 A.2d at 211. The Supreme Court affirmed that definition.

(8.3) Addressing itself to the manner in which the New Jersey system, like the present Ohio system, placed primary

reliance upon the ability of the school districts to raise revenue through property taxation, the court made it plain that the thorough and efficient clause was clearly intended to impose ultimate responsibility for the support of the public school system upon the state:

The obligation being the State's to maintain and support a thorough and efficient system of free public schools, the State must meet that obligation itself or if it chooses to enlist local government it must do so in terms which will fulfill that obligation. 303 A.2d at 292.

The court went on to say:

A system of instruction in any district of the State which is not thorough and efficient falls short of the constitutional command. Whatever the reason for the violation, the obligation is the State's to rectify it. If local government fails, the State government must compel it to act, and if the local government cannot carry the burden, the State must itself meet its continuing obligation. 303 A.2d at 294.

Moreover, according to the New Jersey Supreme Court, the obligation to provide a thorough and efficient education includes that of ensuring that every child must receive a thorough education. Thus, the command of the education clause embodies the requirement of essential fairness and uniformity treatment.

(8.4) Measured by the above criteria, the New Jersey system was found wanting. The education provided in many New Jersey school districts required significant upgrading. Said the court:

. . . an equal educational opportunity for children was precisely in mind [when the education clause was passed.] The mandate that there be maintained and supported "a thorough and efficient system of free public schools for

the instruction of all of the children in the State between the ages of five and eighteen years" can have no other import. Whether the State acts directly or imposes the role upon local government, the end product must be what the Constitution commands. 303 A.2d at 294.

(9) It is thus clear that the rationale of *Robinson* is consistent with the imperatives which the Ohio Supreme Court read into Ohio's education clause in *Miller v. Korns* more than fifty years ago.

(10) It is significant also that the Ohio General Assembly has evinced an awareness of its constitutional duty to the school children of Ohio since as early as 1935 and that it then construed that duty as including the provision of equality of educational opportunity. The statute which enacted the earliest form of state subsidy to school districts declared it to be the purpose of that legislation to provide a thorough and efficient system of common schools throughout the state, "promoting economy and efficiency in the operation thereof, and providing for the equalization of educational opportunities." O.G.C. § 7600-1. It is significant also that in 1956 when the General Assembly adopted the first form of a school foundation program it empowered the newly-created State Board of Education to prescribe minimum standards to be applied in all elementary and high schools "for the purpose of requiring a general education of high quality." O.R.C. § 3301.07.

(11) Therefore, it is clear that the command of the thorough and efficient clause has historically and consistently been construed both by the Supreme Court and by the General Assembly as that of providing not only an educational system which has the elements of thoroughness and efficiency but one which delivers an education of high quality as well as equality of educational opportunity to Ohio's school children. The General Assembly has consistently recognized that it has a duty to make provision for such a system.

(12) The Court concludes therefore that the mandate of Article VI, § 2 must be so construed, and that the constitutionality of the educational finance system now in effect must be measured by the criteria which such a construction establishes. Indeed, it appears that this construction is not at issue in this case because the defendants introduced in evidence through Defendants' Exhibit I-C certain pages from Webster's Third New International Dictionary and noted that the definition of "thorough" includes "complete in all respects, careful about all details", and that the definition of "efficient" includes "able to choose and use the most effective and least wasteful means of doing a task or accomplishing a purpose" and "marked by qualities, characteristics or equipment that facilitate the serving of a purpose or the performance of a task in the best possible manner, eminently satisfactorily in use, effective to an end." (Tr. 4670-71).

(13) The Court concludes from all of the evidence that, measured by the standard established by Article VI, § 2, the entire system for financing elementary and secondary education now in effect in Ohio, including particularly certain sections of Chapter 3317 O.R.C., represents a massive default by the General Assembly to make provision for a thorough and efficient system of common schools throughout the state. The present system, under which almost all of the schools in the state are found to be unable to comply with the State Board of Education's minimum standards (Findings VII (A)), under which numerous school districts were forced to close their schools for lack of funds in 1976 (Finding VII (B)) and a far greater number are forced to close in 1977 (Finding VII(C)), thereby causing students to suffer irreparable educational deficits (Finding VII (D)), under which conditions of educational deprivation exist in more than half of Ohio's school districts (Finding VII (F)), including the state's large urban districts (Finding VII (G)), under which vast disparities exist among Ohio's school districts in total state and local support, in expenditures for instruction and in the quantity

and quality of educational services (Finding VII (I)), under which essential equality of educational opportunity is denied to Ohio's school children and only substandard educational services are delivered to the overwhelming majority of the pupils (Finding VII (M)), under which the local tax effort mechanism upon which the system relies for over 60% of its total revenue has collapsed of own weight (Finding VIII-I (A)), under which the state has absolutely neglected the capital needs of the school districts (Finding VIII-I (D)), under which the funding formula rewards the school districts which have high tax rates because they have high median income (Findings VIII-II(D)), provides only inadequate and disequalizing subsidies for its categorical programs (Findings VIII-II (E)), imposes penalties upon poor districts for lacking the funds to comply with statutory mandates (Finding VIII-II (F)) and disburses save-harmless payments unfairly and improvidently to affluent school districts (Finding VIII-II (G)), and under which most of the school districts are unable to determine their future revenues definitely enough to be able to plan their curricula and staffing (Finding VII (M)), represents the absolute failure of the General Assembly to carry out its duty as provided in Article VI, § 2 of the Ohio Constitution.

(14) Bearing in mind the Ohio Supreme Court's statements in *Miller v. Korns, supra*, that "A thorough system could not mean one in which part or any number of the school districts of the state were starved for funds. An efficient system could not mean one in which part or any number of school districts of the state lacked teachers, buildings or equipment", 107 Ohio St. at 298, the Court must and does conclude that the present system in its entirety, is in clear violation of the thorough and efficient clause of the Ohio Constitution.

(15) The Court concludes specifically that O.R.C. §§ 3317-022, 3317.023 (A), (B) and (C), 3317.53(A), (B), 3317.02

(E) and Section 30 of Am. Sub. SB 221 violate Article VI, § 2 of the Ohio Constitution.

(B) Violations of Article I, Section 2 Of The Ohio Constitution

(1) Article I, Section 2 of the Ohio Constitution, which states that "Government is instituted for [the] equal protection and benefit [of the people]", is known as the equal protection clause. Equal protection of the laws is a cardinal tenet of the American system of justice. It guarantees that all citizens shall be accorded equal treatment by the government.

(2) The United States Supreme Court has defined the benchmarks of equal protection in construing the equal protection clause of the Fourteenth Amendment. Ohio courts have consistently applied federal guidelines in construing the Ohio Constitution's equal protection clause, *Porter v. Oberlin*, 1 Ohio St. 2d 143 (1965); *Direct Plumbing Supply Co. v. Dayton*, 138 Ohio St. 540 (1941); *State ex rel. Struble v. Davis*, 132 Ohio St. 555 (1937); *Wilson v. Zanesville*, 130 Ohio St. 286 (1935), and thus this Court must apply those guidelines to the issues presented in this lawsuit.

(3) The guarantee of equal protection has undergone evolutionary changes in the growth of the law. In recent years the Supreme Court has formulated a two-tiered test for applying the equal protection standard. That test, simply stated, is that unequal treatment of classes of persons by a state is valid if the state can show that a rational basis exists for the inequality⁴⁸ unless the discrimination impairs the exer-

⁴⁸ See, e.g., *McGowan v. Maryland*, 366 U.S. 420 (1961).

cise of a fundamental interest⁴⁹ or establishes a suspect classification.⁵⁰ If the discrimination is of the latter nature, it becomes the subject of strict judicial scrutiny and will be upheld only upon a showing that it is justified by a compelling state interest.⁵¹

(4) The Supreme Court of the United States has held that a fundamental interest is one which is founded upon a constitutional right.⁵² Applying that definition, the discriminations existing among school children which are created by the Ohio system for financing elementary and secondary education do impair a fundamental interest. That fundamental interest is derived from the right of school age children to attend school in a thorough and efficient system of common schools which is guaranteed by Article VI, § 2 of the Ohio Constitution.

(5) It becomes appropriate, therefore, to determine whether, when subjected to strict judicial scrutiny, the discriminations among school children in Ohio are justified by any compelling state interest. It is also appropriate to ascertain at the same time whether they are even supportable under the traditional rational basis test.

(6) As a preface to an equal protection analysis of the Ohio school finance system, it is appropriate to examine the opinions of two state supreme courts which have held state

⁴⁹ See, e.g., *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

⁵⁰ See, e.g., *Graham v. Richardson*, 403 U.S. 365 (1971); *Loving v. Virginia*, 388 U.S. 1 (1967); *Oyama v. United States*, 332 U.S. 633 (1948).

⁵¹ See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438, 447 n. 7 (1972); *Dunn v. Blumstein*, 405 U.S. 330, 342 (1972); *Memphis Am. Fed. of Teachers, Local 2032 v. Board of Educ.*, 534 F.2d 699, 702-03 (6th Cir. 1976); *Tanner v. Weinberger*, 525 F.2d 51, 54 (6th Cir. 1975).

⁵² *Shapiro v. Thompson*, 394 U.S. 618 (1969).

school financing laws to be in violation of their states' equal protection clauses.

In *Serrano v. Priest*, 135 Cal. Rptr. 345, 18 Cal. 3d 728 (1976), the California Supreme Court affirmed a lower court opinion declaring the California school finance system to be in violation of the California Constitution's equal protection clause. The *Serrano* court which held that education was a fundamental interest because the California Constitution guaranteed children the right to a free public education, applied the strict scrutiny test to the California system for financing public education. The grounds upon which the California decision rests are that any system in which two basic elements are present — the conditioning of the availability of school revenues upon district wealth and the dependency of the quality of education upon the level of district expenditure — must be declared invalid unless sufficient justification is found to satisfy the applicable equal protection test. In *Serrano* the state interest advanced in justification of the discrimination was local control of fiscal and educational matters. The court held that interest to be chimerical from the standpoint of the less favored districts and, thus, found the California system unconstitutional.

(6.1) The California Supreme Court's 1976 *Serrano* opinion affirmed its more famous 1971 opinion in that case which held that a school financing system is violative of equal protection guarantees if it "makes the quality of a child's education a function of the wealth of his parents or his neighbors." *Serrano v. Priest*, 6 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

The applicability of the two *Serrano* opinions to this case is obvious. The very evils which caused the California Supreme Court to strike down the California system on equal protection grounds are found to exist in the Ohio system.

(6.2) In April of 1977, the Connecticut Supreme Court in *Horton v. Meskill*, 376 A.2d 359, declared that state's school

finance system violative of Connecticut's equal protection clause because the system, which relied heavily on local property taxation, created substantial disparities in educational services among that state's schools as a result of the great disparities which existed in the revenue raising capacities of the local communities. The *Horton* court held that the system interfered with a fundamental interest because education was a right guaranteed by the Connecticut Constitution. Applying strict scrutiny to the educational discriminations under the Connecticut system, the Court held that the interest of local control of education was not a compelling state interest since there is no reason why local control need be diminished in any degree merely because some other system is adopted.

(7) An examination of the law and the evidence demonstrates that the disparate treatment which school children among the school districts in Ohio are accorded under the present system is the result both of the system in general and of the purpose and effect of certain specific statutes. Each of the separate statutes which have a demonstrably discriminatory purpose or effect upon school children is the subject of a separate contention on the part of the plaintiffs and each must be separately evaluated as a matter of law. In a larger sense, however, the ultimate fact of widely disparate expenditures per pupil among the districts and widely disparate educational offerings from substandard to high quality, with most of the school children receiving offerings tending to be substandard (Finding VIII-I (2)(3)), all of which are based upon disparities in property and income wealth (Finding VIII-II (A)), demonstrate that the entire system discriminates cruelly against a majority of Ohio's school children.

(8) It is important to note in this connection this Court's finding that there is a relationship in general between the total number of dollars per pupil which a school district has and the quantity and quality of the educational services which that district provides to its students (Finding VII (J)), its

related finding that there is a relationship in general between the delivery of educational services to children and the educational achievement of children (Finding VII (K)), and its conclusory finding that the differentials which exist in financial capacity among school districts represent real and immediate differences in potential educational achievement on the part of the school children in Ohio (Finding VII (K)(1)), and that because the system is one in which vast differentials in resources exist among the school districts (Finding VII (I)), the present system for financing public elementary and secondary education in Ohio deprives the school children of Ohio of an essentially equal opportunity to achieve and advance educationally and to equip themselves for future life.

(9) The Court has searched the record in vain to discover either a compelling state interest or a rational basis which can reasonably be said to support such a destructively discriminatory system. The Court concludes that the defendants' principal rationale for such disparities, and one derivable by inference at that, is that to correct the disparities in public education by state funding would encroach unduly upon local control of education. The defendants have endeavored also to show that the present system is designed to neutralize the disparities in financial resources among the districts which are based upon property wealth. (Defendants Exhs. III-B-1 through 7). But they have conceded that it is designed to perpetuate the disparities which are based upon school district tax rates. (Tr. 7206, 7239, 7283-84, 6931). It may also be inferred from the defendants' case that they are contending that the vast disparities in educational services which exist under the present system cannot be overcome by state funding because the state lacks the financial resources to increase educational expenditures substantially and, that, in any event, the Legislature is unwilling to raise taxes to generate the funds necessary to finance education adequately.

(10) Insofar as the concern about the potential loss of local control of education is concerned, whatever may be

said about local control (the evidence shows that the present system has actually eroded local control (Finding XI (1))), and many experts testified that increased state funding would probably enhance it (Finding XI (2))), the fear of loss or curtailment of local control of education is not a constitutionally acceptable basis for countenancing discriminations in educational opportunity in Ohio because the Constitution calls for a thorough and efficient *system* of common schools *throughout the state*. Thus, such a concern is unacceptable as a compelling state interest to justify educational discrimination in Ohio. Neither is it a rational basis for gross inequality of educational opportunity.

(11) Nor can a policy of neutralizing disparities based upon property wealth, while perpetuating or even accentuating those based upon school tax rate, pass constitutional muster. As the evidence shows and the Court has found, the present system does little to reduce the financial disparities among the districts which are based upon property wealth. Moreover, it introduces an intentional discrimination among school children based upon tax rate through a concept called District Power Equalizing by rewarding the districts which levy millage above 20 with extra state funds for each mill levied up to 30. O.R.C. § 3317.022(A). Thus, Ohio's school financing formula formally perpetuates disparities in educational services for the admitted purpose of rewarding the residents of school districts for their tax effort. (Tr. 7239, 4857).

(12) The Court concludes, as a matter of law, that rewarding local tax effort is a constitutionally unacceptable reason for sustaining a discriminatory school finance system. In the matter of education, the obligation of the General Assembly extends to the school children, not to the taxpayers. Education, not tax equity, is guaranteed by the Ohio Constitution. Thus, neither a compelling state interest nor a rational basis can be found in that rationale.

(13) Nor, finally, can the Court regard the state's alleged inability to generate the funds to overcome its disparate treatment of school children or the Legislature's unwillingness to increase taxes for that purpose as satisfying either the compelling state interest test or the rational basis test. Not only has the Court found from the evidence that Ohio has substantial untapped financial capacity which can be brought into play for the reform of public education (Finding VI (B), IX (26)), but it is well settled that citizens may not be compelled to forego their constitutional rights because of lack of financial resources.⁵³ It goes without saying that legislative unwillingness to redress a constitutional violation is hardly an excuse for the perpetuation of such a violation.

(14) In light of the foregoing analysis, the Court concludes that neither a compelling state interest nor a rational basis can be found to support the discriminations against school children which the Court has found to exist among the school districts of Ohio under the present system. Thus, the Court finds and concludes that the present system for financing public elementary and secondary education in Ohio, is in general violative of the equal protection and benefit clause contained in Article I, § 2 of the Ohio Constitution.

The Court turns next to an analysis of the constitutionality of the separate components of the statutory scheme.

(15) The Mandate Provisions

(15.1) In their supplemental complaint the plaintiffs assert that O.R.C. § 3317.023 and related statutes which impose penalties upon districts for their inability to comply with statutory mandates concerning pupil-teacher ratios and the number of service personnel they employ, violate the Ohio Constitution's guarantee of equal protection. They also allege

⁵³*Palmer v. Thompson*, 403 U.S. 217, 226 (1971); *Watson v. Memphis*, 373 U.S. 526 (1963); *Cooper v. Aaron*, 358 U.S. 1 (1958); *Buchanan v. Warley*, 245 U.S. 60 (1917).

that the adjustment provided for in O.R.C. § 3317.023 relating to the training and experience of teachers, which imposes penalties to some districts and pays rewards to others, violates the equal protection clause. The current law which makes provision for those mandates is contained in O.R.C. §§ 3317.022(D), 3317.023 (A), (B) and (C) and 3317.53 (A) and (B).

(15.2) The Court found that in 1975-76, 401 districts incurred penalties for failure to comply with one or more of the mandates and that in that same year 230 districts received rewards; that in 1976-77, 409 districts received penalties and 236 districts received rewards. (Finding VIII-II (F) (6)). The Court found also that the effect of the mandates has been that of penalizing the poor districts and rewarding the well-financed districts. (Finding VIII-II (F)(7)).

(15.3) The Court found further that the effect of the mandate sections of the statute was to enact an invidious discrimination against the children resident in the school districts which lack the funds to comply with the mandates contained therein, that the General Assembly has established standards without finding compliance therewith and is punishing school children educationally for living in poor school districts. (Finding VII-II (F)(II)).

(15.4) The Court therefore concludes that, as a matter of law, the mandate provisions of the statute establish invidious discrimination against the school children who live in the school districts which lack the financial resources to comply with the mandates those provisions impose; that those children have a right guaranteed by Article VI, § 2 of the Ohio Constitution to attend school in a thorough and efficient system of public schools; that in the provision of educational services the state not only has no right to penalize school children because of the financial distress of their school districts, but, on the contrary, has the constitutional duty to provide their districts with the resources to enable them to deliver to the students an education of high quality. Since the pen-

alty provisions directly and cruelly impair a fundamental constitutional right, they must be the subject of strict judicial scrutiny. Those penalties cannot be justified by any compelling state interest. Nor do they rest upon any rational basis. Inducing school districts to hire suitable numbers of qualified staff cannot be accomplished through any means which punishes school children educationally. The penalty provisions represent an inversion of the proper relationship between the General Assembly and the school children of Ohio, to all of whom the Legislature owes an equal educational opportunity of high quality. O.R.C. §§ 3317.022 (D), 3317.023 (A), (B) and (C) and 3317.53 (A) and (B) violate the equal protection clause of Article I, § 2 of the Ohio Constitution and they are therefore void and of no effect.

(16) The Save-Harmless Provisions

(16.1) The plaintiffs have also shown, and the Court has found, that §§ 3317.02(E), 3317.51(B) and Section 8 of Am. Sub. SB 170, known as the save-harmless provisions of the school finance system, are designed to, and indeed do, assure that no district receives less basic state aid than it received during certain designated prior years, regardless of how many dollars that district receives under the present system in total state and local support and without regard to any factor of financial need in that school district. (Finding VIII-II (G)(1)). The current law which makes provision for save-harmless payments is O.R.C. § 3317.022 (D)(2) and Section 30 of Am. Sub. SB 221. Thirty districts received save-harmless payments in 1975-76 and 51 districts received them in 1976-77. Approximately \$5,000,000 in save-harmless funds were disbursed in 1975-76 and \$10,000,000 were disbursed in 1976-77. (Finding VIII-II (G)(2)). The districts which receive save-harmless payments are among the wealthiest in the state. (Finding VIII-II (G)(3)). None of the districts where widespread educational deprivation is found to exist receives save-

harmless payments. (Finding VIII-II (G)(4)). If the amount of money paid to affluent districts in save-harmless funds had been allocated to districts on the basis of educational need, substantial educational benefit could have been achieved where it is desperately needed. (Finding VIII-II (G)(7)).

(16.2) The Court found that the provisions in the present law for save-harmless payments accentuate the financial disparities which exist among districts and waste substantial amounts of needed educational dollars irresponsibly; further, that such provisions are educationally indefensible. (Finding VIII-II (G)(8)). The Court also found that no feasible explanation for such payments exists except that of political log-rolling. (Finding VIII-II (H)(8)).

(16.3) The Court therefore concludes that because the save-harmless provisions direct extra funds to school districts without regard to need, operate in such a manner as to accentuate disparities in educational resources and educational opportunities among school districts, favor affluent districts at the expense of poor districts and waste needed educational funds irresponsibly, they establish an invidious classification among school children which neither is justified by any compelling state interest nor is predicated upon any rational basis. Thus, O.R.C. § 3317.022(D)(2) and Section 30 of Am. Sub. SB 221 violate the equal protection clause of Article I, § 2 of the Ohio Constitution and are therefore void and of no effect.

(17) The District Power Equalizing Elements, Including "Reward For Effort":

(17.1) The plaintiffs have shown, and the Court has found, that District Power Equalizing is misapplied in a state such as Ohio where the school districts have no direct taxing power except through voter referendum. (Finding VIII-II (H)(6)). Equalizing the property bases upon which school taxes are levied among the districts, either wholly or partially (as the

Ohio law does),⁵⁴ does not equalize the financial capacities of the school districts because the extent to which a district participating in the formula can achieve parity, up to the limited level the formula purports to set,⁵⁵ is dependent upon its school millage rate, which is, in turn, dependent upon both the ability and the willingness of its residents to tax themselves for education. Both of those factors are educationally irrelevant. Moreover, as the evidence shows, the school tax rate of a district is more likely to depend upon the median family income of that district than upon any other consideration. (Finding VIII-II (A)(3), VIII-II (D)(3)).

(17.2) It is thus clear that the present formula makes the quality of a child's education a function not only of the property wealth of his school district,⁵⁶ but also of the income wealth of his district and the willingness of the residents of his district to tax themselves for his educational benefit.

(17.3) If the evils of the system were limited only to those enumerated in the foregoing paragraph, the formula would violate the equal protection guarantee of Article I, § 2. A school finance system which creates large disparities in educational opportunity by allowing or causing the quality of education throughout the state to depend upon three educationally irrelevant factors — property wealth, income wealth and voter willingness — violates the basic concepts of equal protection of the laws. The rationale of *Serrano* and *Horton* is squarely applicable to the legal and factual pattern in Ohio. Indeed, the

⁵⁴ The support levels of \$48 per pupil per mill and \$42 per pupil per mill are so low that many districts are out of the formula and many more will soon be out of it. (Finding IV (3)).

⁵⁵ The maximum number of dollars per pupil which any district could generate with a levy of 30 mills assuming that its actual valuation and millage were not less than its equalized valuation and millage and that it collected all of its local revenue.

⁵⁶ The evidence shows that property wealth continues to be the dominant consideration which influences disparities in educational services among the districts (Finding VIII-II (A)(1)).

principle of *Serrano I* is doubly violated by the Ohio system since under that system the quality of a child's education is a function of the property wealth *and* of the income wealth of his parents and neighbors. In establishing a system under which the quality of education is dependent upon tax rate, the General Assembly has created invidious classifications among a class of persons, all of whom are supposed to be equal beneficiaries of a right guaranteed by the Constitution. As stated *supra*, neither a compelling state interest nor a rational basis exists for these classifications.

(17.4) The inequities which the General Assembly has legislated in § 3317.022(A) are not, however, limited to those enumerated in foregoing paragraphs. In providing, in that section, for the payment of additional dollars per pupil for each equalized mill which a district levies in excess of 20 but not exceeding 30, the General Assembly has intentionally discriminated among school children by rewarding with extra dollars the pupils who attend school in districts which levy more than 20 mills while denying those extra dollars to pupils who attend school in the districts which do not levy more than 20 mills. That provision goes farther than merely establishing a single invidious discrimination, however. Inasmuch as extra dollars per pupil are paid for each mill which a district levies in excess of 20, the statute establishes ten separate tiers of discrimination which affect educational levels throughout the state. And school children will be relocated among the various tiers of discrimination from year to year as myriad factors including millage equalization adjustments and voter caprice influence the equalized millages of the districts upward or downward. The evidence shows that a great many school children, who live in the low wealth districts which chronically fail to pass school tax levies, have been consigned by the General Assembly to continue to receive substandard educational opportunities for as long as they attend the public schools. (Finding VII (B)(C)(E); VIII-I(A); VIII-II (A)(39)).

(17.4) Thus, O.R.C. § 3317.022, which contains the "reward for effort" feature of the law, enacts a pernicious denial of the right to equal educational opportunity guaranteed by Article VI, § 2 of the Ohio Constitution. Neither a compelling state interest nor any rational basis supports it, and the Court concludes that O.R.C. § 3317.022 violates the equal protection clause of Article I, § 2 of the Ohio Constitution and is therefore void and of no effect.

(C) Criteria of a Valid System

(1) The Court does not wish to convey the erroneous impression that it has concluded as a matter of law that the thorough and efficient clause of Article VI, § 2 and the equal protection clause of Article I, § 2 of the Ohio Constitution require that the General Assembly finance public education in any specific way. The Court does believe, however, that a school finance system must contain certain essential elements in order to pass muster under both constitutional provisions.

(2) In the opinion of the Court, a system for financing elementary and secondary education in Ohio must satisfy the following criteria in order to comply with the provisions of Article VI, § 2 and Article I, § 2 of the Ohio Constitution.

It must be addressed to a realistic appraisal of educational needs and educational costs;

It must provide as nearly as measurable an equal educational opportunity in all districts;

It must provide a general education of high quality to every student and provide for the special educational needs of certain students;

It must compensate urban districts adequately for their special costs;

The quality of a child's education must not be a function of any factor irrelevant to that child's educational needs, such as the property wealth or income wealth

of his school district or of the willingness of the voters of his district to pass tax levies or bond issues;

The State's role in the financing of education must be primary and dominant.

While revenue generated by property taxation may be utilized to finance education, variations in local tax effort among the districts may result in differences in educational offerings only above the level of a general education of high quality;

The state may not reward school districts for their local tax effort or in any way make the amount of state aid dependent upon the ability or willingness of the residents of a school district to finance education;

School districts must know what their resources will be sufficiently in advance of the school year so as to be able to plan their curricula and staffing;

The state must make adequate provision for the capital needs of the school districts on a continuing basis, as well as for the current operation of the districts;

The system must be funded at whatever level is necessary to ensure compliance with the foregoing criteria.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No. 79-615

NOV 30 1979

LAWRENCE K. JR., CLERK

BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY
OF CINCINNATI, ET AL.,

Petitioners,

v.

FRANKLIN B. WALTER, SUPERINTENDENT
OF PUBLIC INSTRUCTION, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF FOR RESPONDENTS
IN OPPOSITION

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CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the following constitutional provisions and statutes:

(1) Article VI, §2 of the Ohio Constitution (1851) which reads as follows:

"The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State;"

(2) Article I, §2 of the Ohio Constitution (1851) which reads in pertinent part as follows:

"All political power is inherent in the people. Government is instituted for their equal protection and benefit. . . ;"

(3) Ohio Revised Code §2505.31 which reads as follows:

"In a civil case or proceeding, except when its jurisdiction is original, and except as provided by section 2309.59 of the Revised Code, the supreme court need not determine as to the weight of the evidence."

IN THE**SUPREME COURT OF THE UNITED STATES****OCTOBER TERM, 1979****No. 79-615****BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF CINCINNATI, ET AL.,***Petitioners,*

v.

FRANKLIN B. WALTER, SUPERINTENDENT OF PUBLIC INSTRUCTION, ET AL.,*Respondents.***ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO****BRIEF FOR RESPONDENTS IN OPPOSITION****QUESTION PRESENTED BY THE PETITION FOR WRIT OF CERTIORARI**

The petition for writ of certiorari filed in this case presents the following question:

Whether or not the "findings of fact" made by the trial court below were indeed factual determinations or were instead conclusions of law (or mixed fact and law); and, if they were factual determinations, whether the Ohio Supreme Court made contrary determinations; and, if so, whether such contrary determinations were appropriately made under Ohio law so as to violate certain Fourteenth Amendment rights of the Petitioners.

I. INTRODUCTION AND STATEMENT OF THE CASE

This case below involved a challenge to the Ohio system for financing public elementary and secondary education. That challenge was based solely upon state constitutional grounds. Plaintiffs (Petitioners) did not allege that the system violated any federal constitutional provisions, and the only issues heard and decided by the trial court, by the appellate court, and by the Ohio Supreme Court related to the validity of the Ohio school finance system under Article I, §2 and Article VI, §2 of the Ohio Constitution.

It was only after Petitioners lost on the merits of their state constitutional challenges that they attempted to interject any federal claim into this lawsuit. This continued litigation is desirable from the Petitioners' standpoint, not because they truly seek a definitive answer to valid claims, but because the very existence of this suit supposedly gives them a lobbying tool for use in trying to coerce the Ohio General Assembly into appropriating more funds for the Cincinnati School District.

After a lengthy trial regarding the state constitutional challenges, the trial court adopted *in toto* Petitioners' proposed findings of fact and conclusions of law. Of principal importance were two general findings made by the trial court.

First, the trial court found that differences among school districts' revenue levels could be partially explained by variations in the amount of taxable property wealth among districts and by variations in the tax rates voluntarily imposed by the citizens of local districts upon themselves. Petitioners' App., pp. 267a-318a. This, the trial court concluded, constituted a violation of the "equal protection and benefit" clause found in Article I, §2 of the Ohio Constitution. Petitioners' App., pp. 404a-416a.

Second, the trial court focused on the "quality" of education. Based upon the subjective opinions of a few witnesses, the trial court concluded that the qualitative level of education in Ohio did not measure up to what the trial court felt to be "high quality" education. The trial court opined that a minimum of \$1700 per pupil would be needed to provide its version of "high quality" education. Petitioners' App., pp. 352a-374a. Since the Ohio finance system was not designed to provide the \$1700 per pupil

figure found appropriate by the trial court, the court concluded that the system also contravened the "thorough and efficient" clause of Article VI, §2 of the Ohio Constitution. Petitioners' App., pp. 393a-404a.

Defendants (Respondents) appealed the trial court's decision to the court of appeals. That appellate court upheld the trial court's equal protection and benefit clause holding, but reversed the thorough and efficient clause decision. The court of appeals recognized that, under the provisions of the Ohio Constitution, it was not within the prerogative of the trial court to substitute its judgment as to what comprised a "high quality" education for that of the Ohio General Assembly. In this respect, the court of appeals stated:

We find ourselves favorably impressed by the thrust of the third assignment, challenging as it does, interference by the judicial department with the legislative, and conclude that the assignment is well taken. The court below erred and overstepped its power in deciding that the finance system for public schools adopted by the General Assembly represents an "abdication" by the Assembly of its duty under Article VI, §2 of the Ohio Constitution. Although exceptions have been judicially recognized, the general rule of noninterference enjoys widespread acceptance; that is, the courts have no power to enforce the mandates of the constitution which are directed at the legislative branch of the government or to control the work of the lawmakers....That courts have no power to substitute their judgment for that of the legislature is axiomatic....[T]he sovereign people of the State of Ohio have unequivocally indicated—through their constitution—the department of government (the legislative) which is to have the responsibility for the state's public school system....We do not have here a situation in which the General Assembly has failed to act; it is obvious from the number of statutes involved in the instant appeal, and otherwise, that the legislature has acted and passed laws which presumably in its discretion provide a "thorough and efficient system" of schools. 10 Ohio Op. 3rd at 32-33 (Petitioners' App., pp. 68a-69a).

Although Petitioners flatly state in their brief that the Court of Appeals "affirmed and adopted all of the trial court's findings of fact" (Brief of Petitioners, p. 6), that is most certainly not the case. Despite the fact that the validity of the trial court's findings had indeed been challenged by the Defendants, the Court of Appeals did not deal directly with this issue. However, it did state that the trial court's conclusions—in the area of equal protection—were supported by the record, but the Court of Appeals *expressly limited* this holding to those conclusions which related to the equal protection issue (Article I, §2 of the Ohio Constitution). 10 Ohio Op. 3rd at 36 (Petitioners' App., p. 75a). The Court of Appeals made no determination at all that those subjective findings and conclusions which were related to the quality of education and the "thorough and efficient" clause were supported by the record. Instead, the Court of Appeals discounted those findings when it held that the Ohio system did not violate Article VI, §2 of the Constitution.¹

Defendants (Respondents) appealed to the Supreme Court of Ohio on the state equal protection issue (Article I, §2), and Petitioners cross-appealed on the thorough and efficient clause issue (Article VI, §2). The Supreme Court affirmed the Court of Appeals insofar as it had held that the school finance system did not violate Article VI, §2. The Supreme Court quoted with approval portions of the opinion of the Court of Appeals in this area, and reiterated what has long been established law in Ohio: in matters of education and school finance, the General Assembly is entitled to great deference from the judiciary. 58 Ohio St. 2d at 385-386 (Petitioners' App., p. 46a).

On the equal protection issue, however, the Supreme Court reversed both the Court of Common Pleas and the Court of Appeals. Like those two lower courts, the Supreme Court expressly recognized the fact that local school district revenues were affected to a certain degree by variations in local property wealth and voter-approved tax rates. 58 Ohio St. 2d at 376-377 (Petitioners' App., p. 37a). Unlike the lower courts, though, the Supreme Court held *as a matter of law* that differences in school

¹ Although the Court of Appeals purposefully refused to affirm the findings and conclusions of the trial court in this area, at no time in the Supreme Court of Ohio did the Petitioners claim that the Court of Appeals erred in this regard or that the action of the Court of Appeals violated their federal due process or equal protection rights.

district revenues due to variations in local property tax bases and voter-approved rates did not constitute a violation of the Ohio equal protection and benefit clause. 58 Ohio St. 2d at 377-382 (Petitioners' App., pp. 37a-42a). That legal conclusion should not have surprised anyone, for it is the very conclusion reached in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), a case in which this Court dealt with a federal equal protection challenge to a state school finance system.

The Petitioners then sought, by a motion for rehearing, to have the Ohio Supreme Court reverse itself. That motion was denied.

Having failed to prevail on their state claims in the state courts, Petitioners have now turned to this Court, contending that they lost their case because of some alleged irregularity in the appellate review process. They are wrong. Plaintiffs were unsuccessful simply because the established law did not support their position. While the trial court chose not to follow that law, the Supreme Court of Ohio was obligated to apply the law, and that is precisely (and only) what the Supreme Court did. Furthermore, the petitioners failed in their efforts to have the Ohio Supreme court reverse itself because they misunderstood the reasoning employed by the Ohio Supreme Court and the Petitioners were (and remain) wrong in their view of the reviewing powers and authority of the Ohio Supreme Court—all of which is explained hereafter.

Accordingly, the pending petition for certiorari has no merit, and Respondents hereby request that the petition be dismissed and that Respondents be awarded their costs in opposing the petition.

II. ARGUMENT

A. INTRODUCTORY SUMMARY OF ARGUMENT

As is discussed and demonstrated hereafter, the Petitioners' position on the actions taken by the Ohio Supreme Court is pure fabrication. They complain that findings contrary to those of the trial court were improperly made, but Petitioners' arguments and credibility are lost when one appreciates the fact that their description of the Ohio Supreme Court's decision is solely based upon an inaccurate, piecemeal and out-of-context presentation

of that decision. Beyond that, they have misstated Ohio law respecting the reviewing powers of the Ohio Supreme Court and have misconstrued notions of Fourteenth Amendment rights in an effort to somehow raise enough issues to keep this litigation alive. Simply stated, the Petitioners are wrong, and the petition should be dismissed.

B. CONTRARY TO PETITIONERS' ASSERTIONS, THE SUPREME COURT OF OHIO DID NOT MAKE A SINGLE STATEMENT OF FACT WHICH IN ANY WAY CONFLICTS WITH THE TRIAL COURT'S FINDINGS OF FACT

1. The "Equal Protection" Facts

The Petitioners' basic premise, that the Ohio Supreme Court formulated statements of fact at odds with the trial court's findings, is wrong and cannot withstand close analysis.²

- 2 The discussion contained in Respondents' Argument squarely addresses the Petitioners on their own grounds; that is, upon the assumption that what they submitted to the trial court as proposed "findings" can be accurately and properly characterized as *factual* determinations drawn from the evidence of record. In that fashion the discussion in this brief proceeds without noting that what the Petitioners present as trial court findings of fact are, as often as not, *conclusions* of law or mixed conclusions of fact and law. The Respondents do, however, challenge the merits of the pending petition on the ground that the trial court's "findings" (as are involved in the petition) are not *factual* determinations at all but are, instead, conclusions of the sort that are appropriate for appellate review even in the most routine cases. While there are numerous examples to demonstrate the mislabeling of legal conclusions as "findings," an appropriate example is found in the conclusion to Petitioners' Brief at p. 23. There the Petitioners cite—as a trial court finding of fact—a statement that draws *conclusions* respecting at least two legal issues which were litigated below:

[T]he school districts in this state generally fall short of having sufficient resources to provide a satisfactory level of education to the overwhelming majority of Ohio's school children.

This the Petitioners represent as a finding of fact so cut and dry as to parallel a factual determination as to the speed of an automobile in an automobile accident case. In this regard the Respondents respectfully point out that the amount of resources which would be "sufficient" and the level of education which would be "satisfactory" were issues of *law* that existed in the case from start to finish. It is apparent from a reading of the Ohio Supreme Court's decision that the high state court took an entirely different analytic position with respect to the sufficiency and the satisfactory levels of resources and educational services than the Petitioners take. Those were dealt with as matters of law, with the Ohio Supreme Court concluding that such matters

In seeking to bolster their contention that the Supreme Court advanced controlling statements of fact which conflict with the trial court's findings, Petitioners pinpoint some specific areas where, they insist, this occurred. In making their examples (starting at page 9 of their Brief), Petitioners first isolate two statements made by the Supreme Court in its decision:

The number of dollars guaranteed per pupil at the 20 mill level has been determined by the Educational Review Committee to be sufficient to assure that all school districts are given the means to comply with the State Board of Education Minimum Standards, which describe a program of "high quality" pursuant to R.C. 3301.07(D). 58 Ohio St. 2d at 382 (Petitioners' App., p. 42a) (emphasis added).

The "Equal Yield Formula" [Ohio's school finance formula] attempts to establish a funding floor, at 20 mills, that is sufficient to assure that each school district has the means to comply with state minimum standards. 58 Ohio St. 2d at 388 (Petitioners' App., pp. 48a-49a) (emphasis added).

After setting forth these statements, Petitioners then quote various findings of the trial court which they claim directly contradict those statements. Such is not the case, however.

Those findings reproduced in Petitioners' Brief at pages 9-10 deal generally with technical violations of the state minimum standards. Nowhere, though, is there any finding that violations occur because Ohio's schools do not have sufficient funds to comply with the standards. Indeed, such a finding would have been impossible to make or support. The uncontested evidence proves that the Ohio system does allot enough dollars so that districts can provide a high quality education in accordance with state standards. Even though schools sometimes may not

had been adequately addressed by the Ohio General Assembly in its establishing of a "thorough and efficient" system of common schools. That legal conclusion was based upon the rationale that the revenue generating mechanisms were a reasonable approach, given Ohio's historic concern with retaining local control, and that it was up to the Ohio Legislature to properly define a satisfactory level of educational services and supply what it determines to be "sufficient" revenues.

comply with each and every one of the hundreds of standards, that non-compliance is because of *non-fiscal* reasons. Thus, in this area, not a single word of the Supreme Court's decision is in any way contradicted by the trial court's findings. That Court correctly noted in its opinion (and plaintiffs have never denied) that the Ohio General Assembly, through its Education Review Committee, did initially determine the number of dollars to be sufficient to meet the standards, and that the Equal Yield Formula does attempt to establish a funding floor sufficient for that purpose.

Petitioners next focus upon the Supreme Court's discussion of the property tax component of the Equal Yield Formula. Petitioners' Brief, pp. 10-12. First, they claim that the Supreme Court's statement to the effect that the formula's "objective is to equalize the property wealth base" of school districts is in conflict with the findings. Their allegation is nonsense. The Supreme Court's statement (58 Ohio St. 2d at 371) is part of a straightforward description of the Equal Yield Formula and its intended operation.

Still focusing on the effects of the local property tax, Petitioners next apparently represent that the Supreme Court found as a fact that the Ohio school finance formula has achieved a perfect "equal revenue return for equal tax effort" effect (and they allege this was not found by the trial court). Petitioners' Brief, p. 11. Again, they are wrong.

What Petitioners refuse to recognize is that in this area there was no need to "contradict" trial court findings. The Ohio Supreme Court dealt with the issues under a "rational basis" standard and appropriately looked to legislative intent and the overall design of the challenged statutory provisions. The Ohio Supreme Court did recognize that the *goals* of the Ohio system are to assure wealth neutrality and equal return for equal effort, but that Court also explicitly noted that those goals had not yet been achieved. The Court stated:

[D]isparity exists in per pupil expenditures throughout Ohio's school districts. This disparity exists because of differences in property wealth and the willingness or unwillingness of voters in a particular school district to pass operating levies. 58 Ohio St. 2d at 376 (Petitioners' App., p. 37a).

Contrary to Petitioners' representation, the Ohio Supreme Court accepted the trial court's general findings that the local property tax base still had some influence upon per pupil expenditures. From that factual basis, the trial court reached the *legal conclusion* that the system violated Ohio's equal protection clause. That *legal conclusion* was in error. It was properly reversed by the Ohio Supreme Court, which held as follows:

While it is no doubt true that reliance on local property taxation for school revenues provides less freedom of choice with respect to expenditures for some districts than for others, the existence of "some inequality" in the manner in which the State's rationale is achieved is not alone a sufficient basis for striking down the entire system. 58 Ohio St. 2d at 381 (Petitioners' App., p. 42a).

Accordingly, the Supreme Court did not disregard, ignore, or contradict any findings of fact in drawing its *legal conclusion* that the Ohio system has a rational basis and is therefore constitutional.

Finally, with respect to the equal protection holding, Petitioners insist that the Ohio Supreme Court's discussion of local control is in direct conflict with the findings of fact. Petitioners' Brief, pp. 12-13. They recite the trial court's conclusion that "the only *boards* of education in Ohio which have any degree of local control over educational decisions are those *boards* in a few well-financed school districts." (Emphasis added.) Then, they allege that this is irreconcilable with the statements of the Supreme Court regarding local control, such as:

By local control, we mean not only the freedom to devote more money to the education of one's children but also control over and participation in the decision-making process as to how those local tax dollars are to be spent. 58 Ohio St. 2d at 377 (Petitioners' App., pp. 37a-38a) (emphasis added).

In addition to allowing people within a school district to determine how much money they are willing to devote to education, local control al-

lows for local participation in the decision-making process that determines how these local tax dollars will be spent. 58 Ohio St. 2d at 380 (Petitioners' App., p. 41a) (emphasis added).

The words and phrases emphasized above highlight Petitioners' attempted sleight of hand.

The trial court's purported finding with regard to local control reflects the Petitioners' mistaken notion that local control means that the local school board is where fiscal control must rest. The Ohio Supreme Court, however, correctly recognized that local control rests in the school district *residents* themselves, i.e., the Court based its equal protection holding upon the fact that local control "allows the local *citizenry* to decide what type of education (beyond state required basics) is best suited for the children of their community." 58 Ohio St. 2d at 377 (Petitioners' App., p. 37a) (emphasis added).

In no way, then, are the Ohio Supreme Court's conclusions on local control inconsistent with the trial court's findings, because at no point did the trial court deny that the Ohio system allows local citizens the right to devote more money to the education of their own children by way of the locally voted property tax. The conclusions which the Ohio Supreme Court reached were ones dictated by the record, by the constitutional and legislative history of Ohio and, as pointed out by the Supreme Court, they are also supported by conventional wisdom concerning educational policy. 58 Ohio St. 2d at 380 (Petitioners' App., pp. 40a-41a). Further, those conclusions are consistent with the rationale and holding of every reported school finance case in this country. See, e.g., *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973); *Olsen v. State*, 554 P. 2d 139 (Ore. 1976); *Thompson v. Engelking*, 537 P. 2d 635 (Idaho 1975); *Serrano v. Priest*, 487 P. 2d 1241 (Calif. 1971).

2. The "Thorough and Efficient" Facts

Turning then to the Supreme Court's thorough and efficient clause holding, Petitioners complain because they feel the Supreme Court made findings of *fact* in conflict with the trial court's subjective *conclusions* on the "quality" of education in Ohio. Petitioners' Brief, pp. 15-17. Petitioners' contention here simply boils down to their philosophical disagreement with the Legisla-

tive and Executive Branches of Ohio Government as to what constitutes an "adequate" education. As the Ohio Supreme Court recognized, the State has seen to it that an adequate education is provided Ohio's children through the establishment of standards which define and require a "general education of high quality." See Ohio Rev. Code §3301.07(D).³ Plaintiffs obviously believe those standards should be different, but as both the Court of Appeals and the Supreme Court recognized, it is within the constitutional prerogative of the Ohio Legislature to develop and prescribe the elements of an adequate education for Ohio's school children. And, again as recognized by the state appellate court and the Ohio Supreme Court, the Ohio General Assembly has fulfilled its constitutional duty in this area.

Finally, Petitioners allege that the Supreme Court found as a fact that school closings or calendar adjustments do not cause any educational harm (which they claim to be the case). Petitioners' Brief, p. 17. With regard to school closings, the Supreme Court merely stated:

Although plaintiffs attempt to equate school closings with "educational deprivation," the uncontested fact is that school districts' calendar adjustments (school closings) have never resulted in any student receiving less than the full 182 days of instruction per year as required by R.C. 3313.48.
58 Ohio St. 2d at 388 (Petitioners' App., p. 49a).

The only factual statement found in this quote is that no child has ever received less than a complete school year of instruction as required by state law (182 days). Do Petitioners dispute this? Absolutely not; they freely admit it. Did the trial court find otherwise? No; it expressly found that the required 182 days have always been provided.

In the area of school closings, just as everywhere else, Petitioners have utterly failed to demonstrate any conflict between the Supreme Court's decision and the trial court's findings. They

³ Ohio Rev. Code §3301.07 reads in part: "In addition to the powers otherwise imposed on the state board under the provisions of law, such board shall have the following powers:... (D) Formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for the purpose of requiring a general education of high quality."

cannot find even one instance where the Supreme Court relied upon a factual statement at odds with the trial court's findings. Thus, the supposed basis for their petition is non-existent.

C. PETITIONERS HAVE MISSTATED THE APPELLATE REVIEWING POWER OF THE OHIO SUPREME COURT

Even if one could accept the Petitioners' statements regarding contrary findings made by the Ohio Supreme Court as true, their arguments with respect to the proper reviewing power of the Ohio Supreme Court must fail. Petitioners' arguments as presented in their brief proceed on a somewhat simplistic, and erroneous, view of Ohio law. Their contention is that the Supreme Court of Ohio will *never* review the record evidence in cases before it and will *always* accept the factual findings made by the trial court unless there is *absolutely no evidence* to support those findings. Petitioners' Brief, pp. 6-7. Ohio law does not support their contention.

The reviewing power of the Supreme Court is linked to Ohio Rev. Code §2505.31, which reads as follows:

In a civil case or proceeding, except when its jurisdiction is original, and except as provided by section 2309.59 of the Revised Code, the supreme court *need not determine* as to the weight of the evidence. (Emphasis added.)

This statute, by its terms, is discretionary, not mandatory, and merely relieves the Supreme Court of the obligation of reviewing the evidence in every case that comes before it; and that is precisely how the statute has been interpreted by the Ohio Supreme Court. In *City of Mentor v. Giordano*, 9 Ohio St. 2d 140 (1967), the Supreme Court stated as follows:

It is well established in Ohio (1) that the Supreme Court is not required to and ordinarily will not weigh evidence, but it will examine the record to determine whether the evidence produced in a trial attains that degree of probative force and certainty which the particular case demands... 9 Ohio St. 2d at 144.

And in *Cincinnati Motor Transport Association v. Lincoln Heights*, 25 Ohio St. 2d 203 (1971), the Supreme Court, relying on *City of Mentor v. Giordano*, *supra*, expressly rejected the contention such as that made by Petitioners here that the Court could not review and weigh the evidence in a case before it. 25 Ohio St. 2d at 206.

Having stated that it will not "ordinarily" weigh the evidence in cases before it, the Ohio Supreme Court has gone on to describe two categories of situations in which it will more readily review the record evidence to determine the correctness of the factual findings. On the one hand, the Ohio Supreme Court has focused upon high burdens of proof as compelling the need for review of the evidence in a case. In *Cole v. McClure*, 88 Ohio St. 1 (1913), the Court stated as follows:

While this court is not required to weigh the evidence in a case on error, and ordinarily will not do so, yet where relief is sought that can be afforded only upon clear and convincing proof, it will do so for the purpose of determining whether the proof was sufficient. 88 Ohio St. at 9.

After setting forth this general rule, the Court in *Cole v. McClure* then devoted nine pages to an examination of the record in that case to determine whether the evidence supported the factual findings. In *State v. Urbaytis*, 156 Ohio St. 271 (1951), the Court stated as follows:

[W]here the law requires in the particular case a higher quality and quantity of evidence than is sufficient in ordinary cases to support a judgment by the preponderance of proof, this court will consider whether the evidence attains to that high degree of probative force and certainty. 156 Ohio St. at 278.

On the other hand, the Ohio Supreme Court has also noted that the gravity of the issues presented may lead the Court to detailed evidential review. In *McLaughlin v. Wheeling and Lake Erie Railway Company*, 61 Ohio St. 279 (1899), the Court noted:

[C]ases may arise involving public considerations of so grave a character that it would be the duty of this court to consider and determine as to the weight of the evidence. 61 Ohio St. at 282.

In this case as it came to the Ohio Supreme Court there were a number of considerations that may well have led the Court to review the record and independently assess the accuracy of the findings. To begin with, there must have been initial inquiry respecting the trial court's wholesale adoption of the plaintiffs' (Petitioners') proposals—what other point is there for the Ohio Supreme Court to have noted the source of the findings and conclusions.⁴ 58 Ohio St. 2d at 369 (Petitioners' App., p. 29a). Further, it would have been clear to the Ohio Supreme Court that the appellate court had virtually ignored all of the findings and conclusions in its reversal of the trial court's "thorough and efficient" holding. Beyond that, the facts were being hotly debated—both sides submitted substantially different portions of the record as supportive of their respective positions; and both sides submitted lengthy, detailed, but substantially different statements of fact. Of utmost importance, the defendants (Respondents) had pointed out to the Ohio Supreme Court that the trial court had rushed to the application of strict scrutiny without having first considered the extremely high burden which the Petitioners undertook as constitutional challengers to established legislation. As later noted by the Ohio Supreme Court, the Petitioners had to prove their case "beyond a reasonable doubt" (a fact which even the trial court had failed to recognize). 58 Ohio St. 2d at 376 (Petitioners' App., pp. 36a-37a). Also of critical importance, all of the above "signals" to the Ohio Supreme Court calling for review of the evidence were apparent in this case, which was presented as one of far reaching policy issues. The Court itself noted the gravity of the public considerations in its rejection of the trial court's strict scrutiny analysis:

[B]ecause this cause deals with difficult questions of local and statewide taxation, fiscal planning and education policy, we feel that this is an inappropriate cause in which to invoke "strict scrutiny." 58 Ohio St. 2d at 375 (Petitioners' App., p. 36a).

Accordingly, as this case came to the Ohio Supreme Court it was appropriately viewed as involving complex policy matters and deserving of the most diligent and detailed attention. The starting point for the Supreme Court can be understood as one of reviewing the facts but to only then conclude that, because the burden of proof was not met by the plaintiffs (Petitioners) and because the issues were appropriately viewed far differently than they were viewed by the trial court, the facts as found by the trial court could be ignored and discarded.

In seeking to avoid this conclusion, Petitioners rely upon the case of *Gillen-Crow Pharmacies, Inc. v. Mandzak*, 5 Ohio St. 2d 201 (1966). They attempt, however, to stretch that case beyond its true meaning. In that case, the Ohio Supreme Court stated as follows:

This court is not required to and does not ordinarily weigh evidence, and a situation of the kind now before us comes within the rule that where similar factual findings are made by the Court of Common Pleas and the Court of Appeals on appeal they must be accepted by this court unless there is no evidence of probative value to support them. 5 Ohio St. 2d at 205.

Unlike the case at bar, *Gillen-Crow Pharmacies, Inc. v. Mandzak* did not involve any major public considerations. That case thus did not involve a situation where the Supreme Court will undertake to review and weigh the evidence.

⁴ The fact that the trial court's findings were a point touched upon by the lone dissenting Justice (58 Ohio St. 2d at 391) goes even further to demonstrate that the majority of the Court very consciously undertook its obligation to independently review the evidence rather than perform a rubber-stamp adoption of the plaintiffs' (Petitioners) proposals as did the trial court.

More importantly, the factual findings in *Gillen-Crow Pharmacies, Inc. v. Mandzak* were ones reached first by the trial court and then by the Court of Appeals in an independent trial *de novo*.⁵ This contrasts markedly with the procedure followed by the trial court and Court of Appeals in the instant case. The trial court itself did not undertake any independent analysis of the record but merely rubberstamped the 400 pages of proposed findings submitted by the Petitioners. That fact itself was recognized by the Supreme Court. 58 Ohio St. 2d at 369 (Petitioners' App., p. 29a). As to the Court of Appeals, that Court simply indicated that the record supported some, but not all, of the findings. In such a situation, the Supreme Court was virtually compelled to review the record evidence to determine whether or not that evidence was indeed sufficient to meet the high burden of proof required in this case. Certainly, the Supreme Court had the power to conduct such a review under Ohio law. There is nothing holy about the factual findings of Ohio trial courts that puts such findings beyond the reviewing power of the Ohio Supreme Court, and Petitioners err in suggesting otherwise.

If, as Petitioners contend, the Supreme Court did disregard certain factual findings of the trial court, we suggest the Court took such action only because the evidence was found wanting to support those findings—a conclusion that should not have been surprising, given the fact that the trial court itself failed to apply the proper evidentiary standard.

D. PETITIONERS' DUE PROCESS, ACCESS-TO-THE-COURTS, AND EQUAL PROTECTION ARGUMENTS ARE WITHOUT MERIT

As a general proposition, Respondents do not challenge the authorities cited by the Petitioners in their brief (pp. 18-22) for the fundamental concepts discussed therein. Respondents, however, do challenge the Petitioners as to their position that the applicable constitutional principles were violated below. The underlying facts, particularly as to the manner in which the Ohio

⁵ Prior to 1971, Ohio provided for appeals from courts of common pleas to courts of appeals on "questions of law" and on "questions of law and fact." As to the latter kind of appeal, the court of appeals would conduct a trial *de novo* and would not limit itself merely to reviewing the record as developed in the court of common pleas.

Supreme Court addressed the issues before it, show that the Petitioners received the fullest measure of due process through extensive and meaningful access to Ohio Courts. The issues they themselves had raised were dealt with fully and fairly.

Respondents respectfully submit that for the Petitioners to now claim that constitutional violations were occasioned or caused by the Ohio Supreme Court upon the basis that they, as litigants, were treated differently than "all [other] litigants in Ohio" is incredible—incredible to the point of demonstrating that Petitioners are capable of making any argument imaginable to keep this litigation pending in some form for their own non-substantive and political purposes.

The weakness and shallowness of Petitioners' claims are demonstrated not only by understanding the substance of the involved Ohio law and the fact that it has been cleverly misrepresented (as discussed *supra*) but also by an analysis of the authorities Petitioners rely upon. For example, they heavily rely upon *Cole v. Arkansas*, 333 U.S. 196 (1948) to bolster their proposition that they have a right to have their state constitutional challenge determined upon the findings made by the trial court as if they had been carved in granite. Not only is there no common sense in the notion of precluding all appellate review of the record in a case such as this one, the decision in the *Cole* case does not provide the support that Petitioners claim. *Cole* was a criminal case where the defendant was tried and found guilty of one statutory crime, but where, upon appeal, the conviction was affirmed for violation of a second and different statutory crime—a crime which had not been considered at the trial court level. The *Cole* case is one which turned upon the impropriety of the state's highest reviewing court deciding that case upon an issue which had never been litigated.

In this school finance case, nothing similar to the facts and circumstances of the *Cole* case is apparent. The Petitioners here were the plaintiffs below, and the constitutional issues which they raised were the very ones squarely dealt with by the Ohio Supreme Court in rejecting their challenge. The Petitioners have no basis to complain, and their petition should be dismissed.

III. CONCLUSION

The Petitioners initiated the litigation below in an Ohio trial court where they prevailed on their challenges. Not satisfied with just that, however, they filed a second lawsuit (encompassing the same claims) in federal court (Southern District of Ohio, Eastern Division; Case No. C-2-78-1004) during the Ohio appellate court's review of the trial court's decision. The federal court abstained upon being informed that, by then, the state case was next to be reviewed by the Ohio Supreme Court; and after the Ohio Supreme Court rejected Petitioners' challenges, so also did the federal court reject Petitioners' demands for more state money.

In the end, then, the Petitioners have been heard on their claims—in detail—at all levels within the Ohio judicial system and in federal court as well. They have sought out and received all of the process due them, and their positions and arguments have been thoroughly and fairly considered at all levels. Simply stated, Petitioners are hard pressed to now argue that their access to the courts was somehow restricted or limited. They have lost, that is all—but they refuse to accept it. As stated by Judge Hogan (on November 1, 1979) in the federal case: "The Cincinnati Board bows to no authority....[They consider themselves] above the law."

The weakness of the Petitioners' position can be measured by the absolute lack of any real demonstration in their Brief that they were at all harmed by alleged and misconceived improprieties in analysis or procedures as conducted by the Ohio Supreme Court. The pending Petition should be dismissed.

Respectfully submitted,

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